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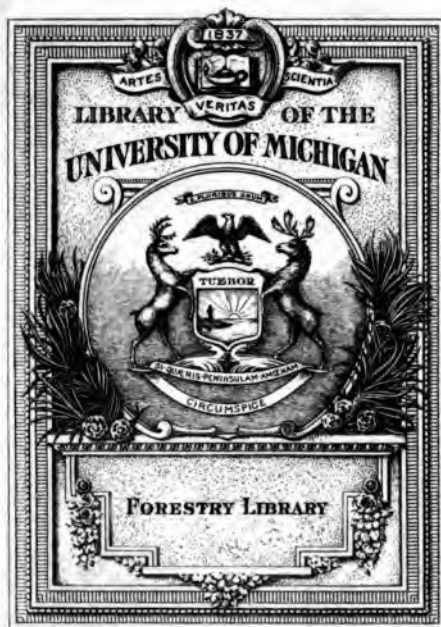
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**PROCEEDINGS OF THE NATIONAL  
TAX ASSOCIATION**





PROCEEDINGS  
OF THE  
FOURTEENTH ANNUAL CONFERENCE  
ON TAXATION  
UNDER THE AUSPICES OF THE  
**National Tax Association**

HELD AT BRETTON WOODS, NEW HAMPSHIRE  
SEPTEMBER 12-16, 1921

EDITED BY  
ALFRED B. HOLCOMB, *Secretary*

NEW YORK, N. Y.  
NATIONAL TAX ASSOCIATION  
1922

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## NATIONAL TAX ASSOCIATION

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## NATIONAL TAX ASSOCIATION

### Objects

Its objects shall be to formulate and announce, through the deliberately expressed opinion of an annual conference, the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.—*Constitution of the National Tax Association*, Art. I, Sec. 2.

### THE ANNUAL CONFERENCE

#### Organization of the Conference

The temporary and permanent chairman, secretary and official stenographer; address of welcome and response to the same; meeting place, accommodations for delegates, and all necessary preliminary details for each conference; and also the program of papers and discussions, shall be arranged for the conference by the executive committee of this association. All other details of the organization and work of the conference shall be arranged by the delegates present in such manner as they may from time to time decide.—*Ibid.*, Art. III, Sec. 8.

#### Time and Place

An annual national conference on taxation shall be held under the auspices of this association during the month of September in each year, or at such time and place as its executive committee may determine. The details of each conference shall be arranged by the executive committee in cooperation with such special and standing committees as may be created by this association at its annual meetings for such purpose.—*Ibid.*, Art. III, Sec. 1.

#### Personnel

The administrative personnel of each annual conference shall be composed of three delegates appointed by the governor of each state, and public officials holding legislative or administrative positions charged with the duty of investigating, legislating upon, or administering tax laws.

The educational personnel of each annual conference shall be composed of persons identified with universities and colleges that maintain a special course in public finance, or at which that subject receives special attention in a general course of economics; members of the profession of certified public accountants; and public men, editors, writers and speakers who hold no educational or official position but who have developed a special interest in the subject of taxation.—*Ibid.*, Art. III, Secs. 2 and 3.

#### Voting Power

The voting power in each conference upon any question involving an official expression of the opinion of the conference shall be vested in delegates appointed by governors of states, universities and colleges, or institutions for higher education, and state associations of certified public accountants, each of whom shall have one vote.

Voting by proxy shall not be allowed.

No member of this association shall have the right to vote in any annual conference by virtue of such membership.—*Ibid.*, Art. III, Secs. 4, 5 and 6.

### Resolutions and Conclusions

The last session of each annual conference, or so much of it as may be necessary, shall be devoted to the consideration of the report of the conference committee on resolutions and conclusions. The report of this committee, as adopted by the conference, shall be its official expression of opinion, and it shall not be held to have endorsed any other expression of opinion by whomsoever made. The voting power of the conference upon an official expression of its opinion is limited with the purpose of safeguarding the conference from the possibility of having its expression of opinion influenced by any class interest; or consideration for those who devote their time to the work or management of this association; or favor for those who contribute money for its support. The annual conference will be the means used by the association for carrying into practical effect its purpose to secure an expression of opinion that will formulate and announce the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.—*Ibid.*, Art. III, Sec. 7.

### Program and Rules

The program as printed and distributed shall be adopted and followed with such modifications as may be required by reason of absence, vacancies, or other cause. The usual rules of parliamentary procedure shall control. Each speaker shall be strictly limited to twenty minutes for the presentation of a formal paper. He shall be warned two minutes before the expiration of such period. The time of a speaker may be extended by unanimous consent of those present. In general discussion each speaker shall be limited to five minutes and no person shall speak more than once during the same period of discussion until others desiring to speak have been heard.

*Voting Power.* The voting power of the conference, upon any question involving an official expression of opinion, shall be vested in delegates in attendance, appointed by governors of states, territories, provinces or possessions, by universities and colleges or institutions for higher education, and by state associations of certified public accountants. No person shall have more than one vote by reason of his appointment as a delegate from more than one source. The voting power shall be by ayes and nays, unless a roll call shall be demanded. On all other questions the voting shall be by vote of all in attendance. The receipt of reports made to this conference by committees of the National Tax Association shall not be considered as expressing the opinion of the conference on the subjects treated.

### Committees

The following committees shall be appointed: (a) A committee of three on credentials, to be appointed by the chairman, who shall designate the chairman of such committee. (b) A committee on resolutions, composed of one delegate from each state, territory, possession or province, selected from among the delegates duly appointed; but in case of the non-attendance of any such, any person present from such locality may be appointed. The chairman shall designate the chairman of this committee, such person to arrange for its organization. All resolutions involving an expression of opinion of the conference on the subject of taxation shall be read to the conference before submission to the committee, and shall be immediately referred without debate.—*Rules of Procedure*, see p. 2.

## FIRST SESSION

MONDAY EVENING, SEPTEMBER 12, 1921

### ORGANIZATION OF CONFERENCE

ZENAS W. BLISS, President of the National Tax Association, presiding.

PRESIDENT BLISS: The meeting will please come to order. I suppose that you are all aware that this is the meeting for organization. The meeting is held of course under the auspices of the National Tax Association, but the conference itself is in the hands of the delegates. I will ask your indulgence for a moment in order that the future of the Association may be provided for. Nominations for a nominating committee are in order.

JOHN EDGERTON of Montana: I move that the President appoint a committee of five on nominations.

[Motion seconded and adopted.]

PRESIDENT BLISS: I will announce the committee later. The regular procedure is now to elect a permanent chairman for the conference.

CHARLES A. ANDREWS of Massachusetts: Mr. President, I move you that the permanent chairman of this tax conference be Honorable Zenas W. Bliss of Rhode Island, the president of the National Tax Association. Are there any further nominations?

[No response.]

MR. ANDREWS put the vote, which was unanimous.

MR. ANDREWS: Governor Bliss is elected and I introduce to you, ladies and gentlemen, as the permanent presiding officer of the conference, Governor Bliss.

CHAIRMAN BLISS: I am sure that I am deeply grateful for this honor, and I am going to show you how really and truly grateful I am by not imposing any remarks upon you at this time. You have all seen the program, and you realize of course how valuable our time is.

Nominations for permanent secretary are in order.

OSCAR LESER: I nominate Mr. Alfred E. Holcomb as permanent secretary. To give the reasons why he should be secretary would be like carrying coals to Newcastle or painting the lily white.

CHAIRMAN BLISS: Are there any further nominations?

[No response.]

CHAIRMAN BLISS: You have heard the nomination, gentlemen.

DELEGATE: I move that the election be made by acclamation.

Motion seconded.

Ayes and noes.

CHAIRMAN BLISS: Mr. Holcomb is elected permanent secretary of the conference. The organization of the conference is now complete. It is customary to have a committee on resolutions. This committee is composed of one member from each state. It is customary for the chair to designate the chairman of this committee, and I ask that you have this in mind, and I trust that the delegates from the different states will be ready when called for to give the name of their member on the committee. It is imperative that these names be handed in immediately upon the close of this meeting, otherwise the committee will not be able to function. I will ask the secretary to read the rules.

SECRETARY HOLCOMB: The rules that we have used in the past are brief, and I should perhaps take the time to read them, because the program this year differs in some respects from those of previous years, in that we have a large amount of discussion, and to do that effectively it will be necessary to live up to such rules as you adopt. The rules that we have had in the past are as follows, including other incidental matters.

I move the adoption of the following: [reading].

#### PROGRAM AND RULES

The program as printed and distributed shall be adopted and followed with such modifications as may be required by reason of absence, vacancies, or other cause. The usual rules of parliamentary procedure shall control. Each speaker shall be strictly limited to twenty minutes for the presentation of a formal paper. He shall be warned two minutes before the expiration of such period. The time of a speaker may be extended by unanimous consent of those present. In general discussion each speaker shall be limited to five minutes and no person shall speak more than once during the same period of discussion until others desiring to speak have been heard.

**VOTING POWER.**—The voting power of the conference, upon any question involving an official expression of opinion, shall be vested in delegates in attendance, appointed by governors of states, territories, provinces or possessions, by universities and colleges or institutions for higher education, and by state associations of certified public accountants. No person shall have more than one vote by reason of his appointment as a delegate from more than one source. The voting power shall be by ayes and nays, unless a roll call be demanded. On all other questions the voting shall be by vote of all in attendance. The receipt of reports made to this conference by committees of the National Tax Association shall not be considered as expressing the opinion of the conference on the subjects treated.

#### COMMITTEES

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[Motion seconded and adopted.]

**CHAIRMAN BLISS:** You will notice from the reading of the rules that they provide for the chairman of the committee on resolutions to be appointed by the chair, and the chair appoints Mr. Charles J. Tobin of New York. Later a short recess will be had so as to enable the delegates to select the members that they wish to place on this committee, and the chair wishes to urge again prompt compliance with this request.

In a gathering of this kind it is not particularly necessary to dwell at great length upon the trials and tribulations of those whose duty it is to provide for the assessment and collection of taxes and the raising of state revenues. Many of us here know all about that, and the rest of us who do not know about that particular phase of the situation know what it is to provide for the revenue. So, there is a bond of sympathy between us all here. We know so well what our difficulties are that we instinctively have a kindly feeling and an opening of the heart to each other. We are not very much accustomed to meeting that sort of feeling when we go out generally amongst the people of our several states. The tax commissioner and the tax assessor practically goes about at large with his life in his hands, and so it is very comfort-

ing to be in a gathering of this kind where one feels perfectly safe. Occasionally, however, one of our calling reaches such heights that the people of the state in which he lives and works forget all about the nature of his calling and think only of the skill with which it is accomplished. The high degree of diplomacy that he exercises makes the people feel not only that they ought to pay their taxes, but really feel grateful to him. We are very fortunate tonight in having a man of that kind with us, a man who has not only been a tax commissioner in New Hampshire; but on account of his good work there he has been rewarded by the people of the state and made Chief Executive of this splendid commonwealth. [Applause.]

I take great pleasure in introducing to you Governor Brown of New Hampshire, who will say a few words of welcome.

GOVERNOR ALBERT O. BROWN of New Hampshire: Mr. Chairman, ladies and gentlemen: It is a rare and happy privilege that enables me to extend the greetings of the state to the officers and members of this conference. New Hampshire welcomes you heartily. She is mindful of the business for which you are assembled and expects to profit by your deliberations. She is in need of a new source of revenue and wants you to point it out. But in order fully to satisfy all her people it must yield a large return and impose no additional burden! This is quite as impossible as squaring the circle. But it is a problem that is constantly recurring and one to the solution of which tax men are always endeavoring to approximate as closely as possible.

It is hoped you will enjoy your stay here, in the dignified and imposing society of the fathers of the republic. Washington, always first in the hearts of his countrymen, the Adamses, father and son—great men—with knowledge of their greatness, Jefferson, author of the immortal declaration, Madison, advocate and supporter of the constitution, and Monroe, distinguished by the doctrine that bears his name, will inspire you with their presence and, if possible, guide you by their counsel. The later presidents, Jackson, Lincoln, Garfield and Cleveland will be at hand for such service as they can render. And the Old Man of the Mountain, a chief of nature's noblemen, in his home among the clouds, awaits the summons to come down and aid you.

This region is, as it has ever been, the birthplace, the cradle and the abode of men. If you extend one arm toward the northwest, you can almost touch the house in which the Secretary of War was born and the mountain-top where he now resides a considerable part of the time. If you stretch out the other arm toward the southeast, you can almost reach the spot where the president of the Pullman company first saw the light and now has

his summer home. And if you will take a walk—one that would be nothing for mountain men—to the neighboring village of Franconia, you may view the residence of America's premier poet. There is a small town in the lower foothills, to which the census assigns only 1260 people, where there were resident at one and the same time Daniel and Ezekiel Webster, General John A. Dix, United States Senator William Pitt Fessenden and Governor Moody Carrier.

It is not my purpose to speak at length of this locality, or of the state at large, of her other highlands, her valleys, or the sections that border on the sea. It would take too long, and I have limited myself to five minutes. But within that restriction I may state another fact, one that I never yet have heard expressed publicly. Massachusetts in all her long and glorious history has sent to the United States Senate but three men who were not natives of that commonwealth. These three men, Webster, Wilson and Weeks, were born among these mountains or hills that surround them.

Now, I repeat my words of welcome, enlarging them to say that it is our hope you will be comfortable while you remain within our borders, and on the morrow will be favored with the wonderful view from the summit of Mount Washington which only a clear sky permits. But these things are incidents merely. The real purpose of this conference is to point the way to more adequate and less burdensome taxation. To reach the limit of progress in this direction will require many conferences. Therefore, we invite you in your own good time to come again. But come before the season has faded, come when the summer is green, or the bright colors of autumn are on the slopes, or the snow of winter is over all, and then we will show you a state beautiful.

CHAIRMAN BLISS: To show our friend the Governor how much we appreciate his welcome, how really fine and far-reaching it is, the response will come from Utah, Mr. Harvey H. Cluff, the Attorney General of Utah.

HARVEY H. CLUFF: Governor Brown, it affords me pleasure on behalf of this splendid association, to thank you for the kind and cordial welcome you have extended to us this evening, and to especially thank you for calling to our minds the fact that we are back here amid the homes of those sages of our country, to whom we look for inspiration, and whose lives have been a guiding star to us in the past. It affords me great pleasure, coming as I do from one of the far western states of the Union, whose snow-capped peaks catch the first rays of the morning sun as it casts its beams from out this land of our forefathers, and whose slopes love to hold and play with the last rays of that orb as it sinks into



the western sky—it is indeed very fitting and proper that we, from far out in the west, who have begun to blaze the trail of civilization, should reflect upon the thoughts you have given us and come back occasionally to meet and receive inspiration and instruction. We feel that as we are building in a yet undeveloped country, we need the inspiration that comes from these hills and these old homes in New England and that by our meeting with you we shall receive splendid thoughts and ideas that will enable us to perform some very constructive work, and to carry back a message to our people that will be of value to them in building and accomplishing the things they are aiming for.

It is true we have met here to discuss what is at this time the greatest problem confronting the American people, the great question of raising the necessary revenue to meet the ever-increasing demands of government. You stated, Governor, that your fair state was in need of some method of raising more revenue. That is true of all the states that are represented here tonight. The question of how that revenue shall be raised and yet impose the least burden, is the important question for this conference and for the American people. I believe, Governor, that with these minds that are assembled here for this conference, you can expect suggestions that will aid you in accomplishing what you have to accomplish in your fair state. These men of affairs who are the thinkers of our country are sure to formulate plans and solve some of the tax problems in a way that will be of material aid to the states and the nation as a whole.

As I view the personnel of this splendid society tonight, I cannot help but reflect upon the words of the poet:

Back of the beating hammer  
By which the steel is wrought,  
Back of the workshop's clamor  
The seeker may find the thought,  
The thought that is ever master  
Of iron and steam and steel,  
That rises above disaster,  
And tramples it under heel.

The drudge may fret and tinker  
And labor with dusty brow,  
But back of him stands the thinker,  
The clear-eyed man who knows;  
For into each plow or saber  
Or piece or part or whole,  
Must go the brains of labor  
That give the work a soul.

Back of the hammer's drumming,  
Back of the belts that sing,  
Back of the motor's humming,  
Back of the cranes that swing,  
There is the eye that scans them,  
Watching through stress and strain,  
There is the mind which plans them,  
Back of the brawn, the brain.

Might of the roaring boiler,  
Force of the engine's thrust,  
Strength of the sweating toiler,  
Greatly in these we trust.  
But back of them stands the schemer,  
The thinker, who puts things through,  
Back of the job the dreamer,  
Who makes his dreams come true.

So, Governor, with this society of thinkers gathered here from all sections of the country, for the purpose of solving the greatest of all present day problems, I see no reason why great good shall not come from our deliberations. I believe you will not be disappointed with the result of this conference and with the work that these men will do in the future. We hope we shall be able to assist you, the other governors and the executive officers of this land in solving the problems that confront you and them, and then we trust that we shall absorb some of that old, conservative, patriotic New England spirit and take it with us into our states where we shall mingle it with the more adventurous spirit of the great middle and far west, there to bring forth the fruits in the development of a bigger and a better country. I thank you.

CHAIRMAN BLISS: These conferences have always been fortunate in having present on the opening session distinguished gentlemen from different parts of the country, and tonight is no exception. We have very fortunately with us this evening a man with whose splendid work you are all familiar, and I take great pleasure in introducing to you Governor Miller of New York.

GOVERNOR MILLER: Governor Brown, members of the conference: I did not come over tonight to talk to you. I am somewhat disappointed. I had hoped when I received the first announcement of the meeting, that your sessions would begin so that I could participate to some extent, but I am compelled to leave in the morning, so I shall have to learn of your deliberations from your published proceedings and from the representatives of New York who are here. I would not undertake to give you any words of wisdom at this organization meeting; indeed, I could not if I would.

I think you are meeting here under most auspicious circumstances. Apparently, from what Governor Brown has said and from what the Attorney General of Utah has said, and from what I know to be the fact in my own study, we have serious tribulations in finding revenue to keep pace with the growing expenditures—so you have some difficult problems to solve. I do not suppose we can hope that you will do more than advance along the road toward the solution of them. But, I think it is very auspicious that you are meeting here in a state which, apparently, from the elevation of tax commissioner Brown to be Governor Brown, has discovered the painless process of extracting money from the taxpayers; and I have no doubt that up here in this pure atmosphere, with the fathers looking down upon you, surrounded by the birthplaces of so many distinguished Americans, that you will have unusual wisdom to solve or to advance the solution of the very difficult problems with which you have to deal.

I agree with what Governor Brown and the Attorney General have said as to the important question before the American people. I would supplement that, however, by saying that it is not only a problem of discovering more revenue, it is the problem of simplifying the laws which we now have and of more equitably distributing the tax burdens which now exist. It is a very significant thing that has been voiced here—the need of more revenue. The federal government, every state government, and the local governments are concerned with that problem; and one of the reasons for it is that so much more is being asked of government than formerly. The reason of it, or one of the reasons of it, is that so many people with influence in our legislative halls are able to embark the state and federal government upon new enterprises without counting the cost. The demand is insistent that the state and the federal government constantly do more and more for the citizen; and the people who make that demand are likely to be those who least think where the money is coming from. So I would say we had two important problems of government, and that the two most important problems confronting our state and national governments are, first to reduce the burden of taxation by trying to live within our means, and, second, to make our tax laws equitable, simple and fair. Certainly they are a jumble now. I do not pretend to speak for other states. I only know a little about our federal tax laws and those of the state of New York. It is certainly a thing to be remedied—that we have tax laws that not even lawyers are able to understand, least of all the poor taxpayers; and it has got so that the business of being a tax expert has come to be one of the most profitable businesses that I know of in this country. Most every firm of lawyers has to have a tax expert, whether he is a lawyer or not. Now, that is certainly a thing to be remedied.

First of all, the tax laws should be simplified and made so that the taxpayer can understand them, and, second, the burden should be more equitably distributed than it is now, and should be so placed that it will not, as it now does, dry up the sources of revenue and become a serious handicap to business—to the proper flow of capital and the use of it in industry. It is a regrettable thing that the necessities of the federal government have required it to extend its arm into fields which should have been reserved to the states, but that cannot be helped, and no one can now see when the time will come that the federal government will be able to find the necessary revenues for its maintenance without entering those fields which should be left to the states, and, of course, that presents a serious difficulty when it comes to the attempt of the states to work out their tax laws equitably.

I think there is another tendency to be deplored which a great many people are encouraging, and that is the tendency of federal aid. Now, that is harmful in all sorts of ways, and so far as the tax problem is concerned, it is serious. People have an idea somehow or other, that anything that comes out of the federal government does not cost them anything, but the fact is that if the localities did directly what they now have the federal government do for them, they would be much better off, and there would be less waste and extravagance in the expenditure of public moneys; and yet because it is easier, because further removed, for people to get their arms in the treasury of the federal government, we have all sorts of groups of people constantly agitating for this, that or the other new venture in the way of the federal government extending aid to the states; and the result is that the proportion of the money that actually reaches the desired end is just in the inverse ratio to the distance to the place from which it comes. We have got in the states, I think, very serious problems to reform our tax laws. It is a fortunate thing that we have such a conference as this, and if we could have uniform state tax laws it would be a very desirable thing—I suppose that will be some time in the future and probably will require some constitutional amendments in some states—but I hope that as the result of such a gathering as this, the minds of the people of the different states engaged in this important work may turn somewhat along similar channels so that as one state may learn from the experience of another, we may gradually get our tax laws in better shape and more nearly alike, and if we can do that, many of the gross injustices which now exist can be cured. I hope that much will come from your deliberations. I am very sorry that I shall not be able to participate in them after tonight.

CHAIRMAN BLISS: Following the usual custom of the confer-

ence, remarks from the floor are now in order. The Chair will recognize anyone desiring to address the conference.

FRANCIS N. WHITNEY of New York: This morning I took it upon myself to telegraph to a former president of this association, the former chairman of the Wisconsin Tax Commission and our dear friend Mr. Haugen, who we know has been ill. I did not know when I wired him that a number of gentlemen who are in attendance at this conference stopped at Madison and saw him on their way here, but I sent a telegram expressing our good wishes—for which I hope the conference will not think I took upon myself too much authority—wishing him renewed health and regretting his inability to be present. In that telegram I named several of his old friends who have served with him in the National Tax Association, and I have this telegram from him, which I should like to read to the Association:

“MADISON, WISCONSIN, SEPTEMBER 12, 1921.

FRANCIS N. WHITNEY,  
Mt. Pleasant House, N. H.

Thanks for kind message. Am all right and can walk further and climb higher than any of parties mentioned. My best wishes for successful meeting and continued success and wholesome influence of the association.

NILS P. HAUGEN.”

CHAIRMAN BLISS: I am sure we are all very glad to hear from our old friend and former president, and the telegram will be made a part of the record of the conference.

There are several telegrams here which I will ask the secretary to read.

SECRETARY HOLCOMB [reading]:

“SACRAMENTO, CALIF.

Greetings to National Tax Association. May you have a profitable session. Regretting that urgency of important business makes it impossible for me to attend.

M. D. LACK, *Secy. State Board of Equalization.*”

“NASHVILLE, TENN.

Regret exceedingly cannot be present at association. State tax commission, of which I am chairman, in session, submerged in work. Tennessee sends greetings and best wishes for successful session.

A. V. LOUTHAN.”

Those are the telegrams that have come in today.

CHAIRMAN BLISS: They will be made a part of the record. I will call on Mr. Donley of Winnipeg to take the floor for a few remarks.

L. W. DONLEY of Winnipeg: Mr. Chairman, ladies and gentlemen: I appreciate the opportunity of being present at this conference and speaking with representatives of different states of your Union, for I can assure you that the subject of taxation is one of the chief topics in Canada, as well as in the United States, and our attendance here affords us the opportunity of exchanging opinions, which may help to solve some of the many difficulties of the problem. The presence here of representatives from the provinces of Nova Scotia, Quebec, Ontario and Manitoba gives proof of the interest taken in Canada in this conference.

In our rapidly growing western country we need in the development of our municipalities considerable expenditures of money. As we all know, whatever advance is made along the line of municipal improvements, the cost is sure to be represented in the tax bill. So we are naturally confronted with the problem of an equitable distribution of taxation, that all may contribute equally their share to the upkeep of the community. In the province of Manitoba, legislation has been passed creating a tax commission, and a uniform system of making assessments is being established throughout the province.

I desire to take this opportunity of thanking the members of this association for the many past kindnesses received from representatives to whom requests have been sent from time to time for information regarding matters of taxation. I desire also to thank the New Hampshire committee for the warm welcome received and to congratulate the committee of the association on the selection of this beautiful place of Bretton Woods for the holding of these meetings. I trust that some time in the near future we shall be able to have the pleasure of having the conference held in the City of Winnipeg.

CHAIRMAN BLISS: We will proceed to the selection of the committee on resolutions. You understand, from the reading of the rules, that there is to be one member from each state, and I trust that the different delegations will remain in the room and decide upon the member they may desire to represent them so that after a recess of about ten minutes they will be able to give the names, as the roll of states will be called. A recess of ten minutes will now be called in order to enable the committee to be arranged.

[Recess.]

The session reconvened after recess.

[Roll call of states by the secretary and naming of delegates for resolutions committee.]

CHAIRMAN BLISS: The session tomorrow morning will be called

to order promptly at 9:30. The chairman of the committee on resolutions wishes to say a word to you before we adjourn.

CHARLES J. TOBIN: If it be the pleasure of the members of the committee on resolutions, we will organize the committee immediately after this session, and to help the work of the committee on resolutions we will ask the general membership to hand such subject-matter as they may have for the work of the committee here, to the secretary, early so as to give plenty of time for the committee on resolutions to have a full and fair discussion of what may be brought before the general conference.

CHAIRMAN BLISS: The secretary has a few announcements.

SECRETARY HOLCOMB: There are only one or two things I want to say: One is, to call attention, if you have not already learned, to the fact that the scheduled drive for tomorrow has been abandoned and we are to take instead, as guests of the New Hampshire Governor and the tax commission, a trip up Mount Washington, if the weather is at all favorable. As I understand it, we shall start somewhere along half-past two or three o'clock. The arrangements with respect to that will be definitely known in the morning.

The program, as you observe, is very full, and it is desirable that the sessions meet promptly. Nine-thirty is the hour for the morning session, 2:00 o'clock for the afternoon session and 8:00 o'clock for the evening session. The executive committee of the National Tax Association will hold a meeting right after this session. Those members of the executive committee of the National Tax Association who are here will kindly remain and get into a corner and have a few words.

Any questions with respect to the program or the conduct of the program may be answered now, if you have anything to suggest. Some of the gentlemen who are down on the program will not be present, but it will not be necessary to mention their names at this time. It may be quite likely that we shall shift certain papers or certain topics from one point to another, but we will not do so with respect to topics where we feel that people will expect to be called upon at a certain time. Have the chairmen of the committees any suggestions or announcements to make?

[Senator Davenport requested that he would like to see tomorrow the members of the committee on the apportionment of taxes on railroads and other public utilities.]

SECRETARY HOLCOMB: The members of the apportionment committee, of which Senator Davenport is chairman, are as follows:

[Secretary reads the names.]

[Carl S. Lamb announced that the committee on apportionment of taxes of interstate mercantile and manufacturing business would meet tomorrow.]

WILLIAM B. BELKNAP: Our committee is notable by its absence. I hope it will show up tomorrow. I should like to suggest that there are several men present who are interested in inheritance taxation, and I think it would be well for them to meet with the committee.

CHAIRMAN BLISS: The Chair will announce the membership of the Nominating Committee: SAMUEL T. HOWE of Kansas, CHARLES J. BULLOCK of Massachusetts, CELSUS P. LINK of Colorado, FRANK ROBERSON of Mississippi, FRANCIS N. WHITNEY of New York.

There being no further business, a motion to adjourn is in order.

Motion to adjourn.

[Adjournment of Session.]



## SECOND SESSION

TUESDAY MORNING, SEPTEMBER 13, 1921

CHAIRMAN BLISS: The meeting will come to order. I think it would be very much better if you would gather about the front of the room. It is almost impossible for anyone to address an audience scattered all over a large room like this.

We have for discussion this morning the problems of New England, and I will call upon Mr. Fletcher Hale of the New Hampshire Tax Commission.

FLETCHER HALE of New Hampshire: Mr. Chairman and gentlemen: May I in a single sentence supplement the greeting of Governor Brown by extending to you a most hearty welcome on behalf of the state tax commission and on behalf of the New Hampshire Assessors' Association, which has cooperated with us in the pleasure of trying to do something to add to your comfort and entertainment, as they cooperate with us in the business of assessing taxes. I have the misfortune to be the person who has endeavored to try to effect hotel accommodations. I regret that there may have been some disappointments, as I know there have been. But, if the percentage of divorces resulting from the marriages I have consummated does not exceed the average ground out by our New Hampshire courts, we shall rest content. I must acknowledge my indebtedness to Mr. Whittemore, our assistant, who has smoothed over many of the rough places in effecting hotel accommodations. If it had not been for him I am sure I don't know where I should have been. Let me impress upon all members of the conference, if you please, that those of you who have not secured your Pullman reservations for return should do so at once at the office desk. Go to Mr. Wing at the office and put your requirements in writing, and Mr. Gourley, the railroad agent, who is present, will see that the accommodations are provided. Please see to that at once, because it is very important, if you desire Pullman reservations and have not already obtained them.

This afternoon we are going to try to take the guests from out of the state to the summit of Mount Washington. It is what we wanted to do in the first place, but for a time it seemed impracticable, and we had advertised the automobile trip over to the Old Man of the Mountain section, a trip which all of you ought to take

while you are here, by the way. But the situation has changed somewhat, so that we find that we can take you up, in a measure in a satisfactory way. The train will leave the Bretton Woods station here in front of the hotel at 3:15 sharp. Mr. Whittemore and I will be at the train to provide you with tickets. Your ladies and guests, of course, are cordially invited. The accommodations provided by the cog railroad are limited to 210 people. I imagine we have a great many more than that here. If there are more than 210 who desire to go up the mountain—and we want everyone to go who is here from out of the state—those who are unfortunate enough to get left behind, if any, today, will please let us know about it and we will see that accommodations are provided so that you can get up to the summit some time during the week. The time at the summit will necessarily be very short, because, owing to a train coming down the mountain which we cannot pass until it reaches the base, we cannot start up until four o'clock, and so we will have to start back about as soon as we get up there. But I think you will be amply repaid for the journey. I advise you all to take some wraps with you. So much for announcements.

Now, as to New Hampshire taxation: In this state revenue from taxation is derived from a capital stock tax of one per cent on domestic insurance companies; a tax of two per cent on gross premiums of foreign insurance companies; a special tax—called by the courts an anomaly in our system—of three-quarters of one per cent on savings bank deposits, assessed directly against the bank; a direct and collateral inheritance tax; a poll tax of five dollars, assessed against both men and women; and a general property tax, which is assessed alike against individuals and corporations, including public utilities. Under the general property tax nothing is taxable except what is specified by the legislature. Real estate, including growth and improvements, mills and their machinery, live stock, stock in trade of merchants and manufacturers, vehicles, boats, wood and lumber, and intangibles, generally speaking, comprise the list of general property, ownership of which subjects the possessor to taxation. All property liable to be taxed is required to be assessed at its full value. Intangibles are taxed at the same rate as other property, to satisfy the constitutional rule of proportionality, and the rate is applied to the value of the property rather than to the income therefrom. Corporate stock, except national bank stock, in the practical operation of our law, is subject to no tax. In the general property tax the state and county taxes are levied by the same municipal officers—a board of three selectmen or assessors—who perform these functions for the local taxes, and the valuations employed are the same for each. Railroads, telephone, telegraph, express and car companies are valued by the tax commission, and to their value is applied the

average general property rate of taxation throughout the state. The work of the local assessors is subject at all time to review by the tax commission, which, perhaps, has unusual authority. The commission is empowered and required to examine into all complaints of unjust taxation, with authority to summon witnesses and order re-appraisals of particular pieces of property or of whole taxing districts. In the event of disregard of such an order, or dissatisfaction with its execution, the commission may make its own appraisal of all the taxable property in any town or city. In fact, the duty of the commission which requires the most time and effort is to see to it that all taxable property is assessed proportionately at its full and true value, which, under the decisions of our courts, is the price it would bring in a fair market after a reasonable effort has been made to find a purchaser who will give the highest price for it. This duty is performed quite generally through cooperation with the local assessors. Very rarely does the occasion require heroic measures. But when that occasion does arise I might say that the recalcitrant assessor presents a much more difficult problem than the dissatisfied taxpayer. The latter, on the average, is out of sorts, not because he has to pay taxes, but because he feels he is taxed disproportionately to his neighbor, and that suspicion or conviction having been removed, he is measurably content. But the former—the recalcitrant assessor—sows all too productive seeds of discontent which bear too rich fruit, not only among his fellow officers but among taxpayers likewise. In our experience local assessors permit or encourage undervaluation either through lack of knowledge, due to failure diligently to examine the property, or to lack of experience, in dealing with particular classes thereof, or through favoritism, due to desire for reelection, or to lack of moral courage to treat friend and foe alike. We believe that some of these causes will be removed through a change in our law, effective this spring, to a system, in use in some other states, by which selectmen are elected one each year for three years, instead of having all three elected annually. By this change, we believe that better equipped and more conscientious men will be chosen in the first instance—that they will profit by experience, and that failure to perform duty through fear of failure of reelection may be reduced to a minimum. I speak particularly of the problem of full valuation, because, this year, with taxes still rising to a considerable degree, and with values rapidly declining, particularly in live stock and merchandise, the task of eliminating under-valuation, to prevent increased tax rates has been very troublesome. We have been directing our attention largely to the stock-in-trade of merchants and manufacturers, to timber and lumber and to the mills and machinery, where we believe the causes stated combine most effectively to create under-

valuation, having first sought out the places with the highest tax rates, on the theory that, other things being equal, undervaluation is most likely to be found where the higher tax rates prevail. Out of 235 towns and cities, the commission has done active work by itself and by its experts in about 40 towns, some of these having been completely revalued. At the same time local assessors have been impressed, through conferences, with the necessity for full valuation; and have been diligently at work in most of the others. The result has been gratifying in some respects. The total valuation of the state will show a substantial net increase, so that the average general property rate to be applied to the public utilities will be only slightly in excess of what it was a year ago. On the other hand, there is considerable undervaluation yet to be eliminated. Theoretically, every town and city in the state ought to be revalued at once, so that our constitutional rule of proportionality might be satisfied throughout the state. Practically, this is impossible, both from the standpoint of finances, and of the limitation on human effort. On the whole we believe our system is good. Its greatest weakness is in the taxation of intangible property. We had hoped for a constitutional change to an income tax from which a remedy might be had, but this was denied us by the people. We tax no corporate stocks, but we tax a thousand-dollar bond, paying fifty dollars interest, on the average, twenty-four dollars, thus taking nearly one-half of the income. The result is, of course, that few honest people hold them and dishonest people hide them. We tax money at interest in the same way and allow an offset to the amount of money at interest owing. Under the rule of our court, and of the United States court, national bank stock, taxable here at least at par, must be allowed the same offset. Holders of national bank stock borrow on it a few days before the first of April, our assessment day, and pay the loan shortly after. The total capital of our national banks, in round figures, is five million dollars, and less than half of it is taxed. Lacking constitutional authority to impose an income tax, we seek the avenue by means of which escape may be had, by a feature of our tax system which is manifestly unjust in its operation and most distressing in its effect. Our particular work of actual valuation as a commission lies with the railroads. The plight of the New England roads, if not more critical, is quite as serious as those of any section of the country. I shall not trespass upon that field further than to suggest that of particular benefit to us will be the promised discussion of proper methods of valuation of that class of property. Here, very roughly, gentlemen, I have attempted to give you an outline of our system, and to suggest our weaknesses and our most disturbing problems. We await, with interest, almost impatiently the suggestions and experience of our co-workers in the field of equitable taxation. I thank you.

CHAIRMAN BLISS: We will now hear from Clement S. Stetson, chairman of the board of state assessors of Maine.

CLEMENT S. STETSON of Maine: Mr. Chairman, the time, as I understand it, is so limited that I will only have an opportunity to suggest some of the problems that are confronting the assessors of Maine, both state and local, and perhaps you will pardon me if I refer to Maine as a state. As to its area, Maine is a little larger than all the rest of New England; it is sparsely populated, not a wealthy state comparatively, having only about six hundred and thirty-eight million dollars in taxable property as it is valued, and a population of eight hundred thousand people, having twenty-five thousand miles of roads. Roads must be maintained; better facilities for getting commodities to market must be had; and I believe that the problems of valuation and taxation that are confronting assessors in the State of Maine are as serious as in any state in the Union.

We have 521 organized towns, cities and plantations. We have about 520 unorganized townships, or wild land townships, containing about ten millions of acres. Of course the organized towns and plantations are assessed for a state, a county and a local tax. The unorganized townships, or wild land townships, pay only a state and county tax. In the western and southwestern sections of the state there seems to be a decided impression that the wild land townships are undervalued, while over in the northern and eastern sections of the state—the wild land township section—there is just as frantic an appeal that the wild land townships are overvalued. The board of state assessors are a board of equalization, and our tax laws are very similar to the tax laws of New Hampshire. Our railroads, steam and electric, our telephone and telegraph lines, our express companies and other utilities are taxed on their gross income. All of the other taxable property in the state is taxed equally in relation to the just value thereof, according to a constitutional provision; and the courts of Maine, as the courts of New Hampshire, have decided that the value thereof is the full market value; in other words, the price that will obtain between a willing buyer and a willing seller in the market. Now, it would be useless for me to come here today and state to you that all the property in the state is assessed at its full market value. It is not, and therefore the great problem in Maine that faces the local assessors, who equalize values between the property owners in the different cities and towns, and the state assessors who equalize values as between different cities and towns, is an equalization problem. If I own a farm or if I own a piece of property in the city that is valued higher than any other like piece of property in the same locality, I am paying a part of my neighbor's tax. What the board of state assessors have been trying to do for the last

four years, through a compliance with the law in the meeting of all the assessors of the different cities and towns once each year and in traveling over the state and looking over different kinds of property, is to equalize the tax burden. We have visited every pulp and paper mill in the state; every cotton and woolen mill in the state, of any size or consequence; we visited all the shoe factories in the state; we have traveled over a number of the wild land townships; in fact, we have put in all of our time trying to get data together to enable us to equalize the values as between the different cities and towns, so that the burden of taxation may be equally distributed so far as state and county taxes are concerned. I say the "burden of taxation" advisedly. The tax upon property in the state of Maine in the last ten years has multiplied three fold. In the last four years, since I have been chairman of the board of state assessors, the valuation of the state of Maine has increased one hundred and sixteen millions dollars, or about twenty-three per cent. At the same time, the average tax rate in the state of Maine has increased about thirty-six per cent. Ordinarily as valuations go up rates go down, but our local people in the different cities and towns, as they meet together each year, to my mind, have been somewhat extravagant in the appropriations which they have made. I also believe that the county commissioners in some counties have been somewhat extravagant in the past few years in the estimates which they are obliged to make every two years and to submit to the legislature for approval, for carrying on the machinery of the county. And, you know, while I like to believe in the wisdom of the state assembly, I sometimes think they become somewhat extravagant in the appropriations which they make. Therefore I am inclined to think that at least in the State of Maine, all the things which are not absolutely necessary, until we get back to normal conditions, in local appropriations, in county appropriations and state appropriations, should be pared down to the place where we are getting only enough to carry on the business of the state efficiently and economically. The wild land problem in Maine is perhaps the most perplexing one that the board of assessors are called upon to solve. As I said, we have about ten million acres of wild land. The legislature each two years appropriates a certain amount of money for the state board of assessors to employ help to cruise those wild lands. It has cost about ten thousand dollars per year. The last legislature appropriated fifty thousand dollars for a period of thirty months, and from these explorations we have found out about the amount of product there is upon those lands, the locations and their availability to market, and we have attempted to place upon those properties a just and fair valuation.

Now, there are certain classes of personal property in Maine

that certainly present a very serious problem for both state and local assessors. The gentleman who preceded me referred to the intangible property of New Hampshire. The intangible property in Maine is escaping taxation almost entirely. We have only about twenty millions of dollars in intangible property in Maine that is taxed. I believe I am well within the bounds of reason and probability when I say that I believe that the taxable intangible property in Maine, when found, will equal the tangible property for taxation purposes. I do not believe for one moment that the intangible property should be assessed at the same rate that other property is assessed. I do believe that it is unjust and unwise and is not right from any standpoint that a property which is bringing in perhaps four and five per cent annually should be taxed at the local rate when that local rate confiscates the income. I believe the people of Maine committed a very serious error when they allowed the circulars and advertisements in the papers to influence them so that the vote was adverse to the constitutional amendment allowing an income tax law to be enacted by the legislature.

There are some classes of personal property in the state that seem to change their location about the first day of each April, principally livestock and automobiles. This property gets out of the jurisdiction and does not come back into the taxing jurisdiction until about the time that the tax is assessed.

I believe in New England; I believe in its future; I believe in its possibilities; I believe there is no place where any man or woman can get so much out of life as right here in New England, and I hope the time will come when every taxpayer will be willing, ready and anxious even, to contribute his full share towards bearing the burden that is imposed upon the locality, the county and the state.

CHAIRMAN BLISS: The next gentleman on the program is Melvin G. Morse, Commissioner of Taxes of Vermont.

MELVIN G. MORSE of Vermont: I am very glad to hear the words of inspiration, hope and cheer from Brother Stetson of Maine; trying to believe that at some time and in some way, the time will come when we shall all be willing to pay our just proportion of taxes. For myself I very much doubt if I shall live to see that happy time. My experience in the past, in trying to induce people to that very enviable state of mind, has met with such poor success that I have about come to the conclusion that the only just tax, the only tax that the ordinary person believes to be absolutely just and equitable, is the tax that the other man pays.

I don't suppose that the tax problems of Vermont are any different from the tax problems of any other state that depends in a large measure for its revenue upon the general property tax.

When I mention the following figures, they may seem insignificant to many of you, but you will remember that Vermont is a little state, not very large in area and somewhat sparsely populated. We are not as large as a respectable city in some of your states—approximately three hundred and fifty thousand people. We seem absolutely insignificant, but yet I assure you, our tax problems are just as real to us, create just as much hardship, trouble and perplexity as they do in other states. We raise practically fifteen million dollars a year. Eleven million dollars of that is raised by the general property tax, the other four million from corporations. We tax our railroads at one and one-quarter per cent, regardless of the average tax rate in the state. We do not use the average rate as they do in New Hampshire. The railroads are appraised by the tax commissioner without any expert assistance, and you can imagine that it is some job for a man who has never had any particular technical training along that line to appraise a system of railroads, and yet the work of the Interstate Commerce Commission has helped us to a large extent. Telephone companies are appraised the same way and taxed at the same rate. We have the same system of taxing banks as in New Hampshire. We impose a seven-mill tax upon bank deposits. We also have a collateral and direct inheritance tax, and we have some other minor taxes. The rest is all raised by the general property tax and depends entirely upon the assessment made by the local assessors. In Vermont, small as we are, we have 248 different boards of assessors, and when I tell you this, you can see something of the problems that we are up against; and the problem is increased tenfold, when I tell you that we have absolutely no method of equalization. Every local board is a law unto itself, and when you come to consider that such a large proportion of our taxes, both state and local, are raised by this method of assessment, or based upon the assessment, you can see something of the inducement which the average board of assessors has to keep their assessment down. Our property list, according to tax appraisals, is approximately two hundred and eighty million dollars, and I do not believe that that is over sixty per cent of the actual value. It is a very discouraging proposition to go out and by mere moral suasion try to make assessors bring up the valuation in their various bailiwicks, because you start out with the absolute knowledge that some of them will not follow your advice. Some of them, appreciating the situation, will insist on keeping their valuation down, and consequently you know that the taxing district who does follow your advice in raising the assessment is to be penalized for trying to follow the law, and the district that deliberately disregards your instruction and advice will profit not only from its own disregard of the law, but also because other towns and cities have made an honest attempt to accomplish a fair appraisal.



So the question comes, just how are we going to remedy this? I drew a bill and had it introduced into our legislature seeking to remedy this evil, but immediately there was raised a hue and cry of the centralization of power—you are attempting to rob the small towns of their autonomy for the purpose of building up a czarlike organization at the state capitol; and although there were some who voted for that measure, yet there were more who did not vote for it, and it was killed. That is one of the problems that we have.

Another problem is the problem which has been spoken of both by the gentleman from New Hampshire and the gentleman from Maine, and that is the intangible proposition. We tax our intangibles under the general property tax, and our average rate in Vermont is 3.16 on the dollar of the grand list, which means \$31.66 on a thousand. You can imagine what a man, with a Massachusetts state bond paying three and one-half per cent, will do with it. He will either sell it or hide it, and it is immaterial to us which he does, since the average assessor will not say to such a man, "You must put that in." If we find it, we include it in the owner's list, but we do not hunt very hard for it. I know an instance of a woman who was left about forty thousand dollars in Massachusetts three and one-half per cent bonds, and the tax rate in the taxing district where she happened to reside was \$41.30 on a thousand. What do you think she did? She certainly did not pay taxes on them; and who will blame her?

A bill was also introduced in our last legislature trying in some measure to remedy this state of affairs. We were able to show to anyone who would inquire that where an intangible law had been tried out, it had worked well, as in Maryland and in nearly all of the other places where they have tried it, and that it has almost without exception brought out large additional amounts of taxable intangible property. Upon estimates which we consider reliable, there is in Vermont two hundred million dollars of taxable intangible property that is not paying taxes. You might think perhaps that the man who owns an intangible that was taxable would be interested to accomplish some sort of legislation that would allow him to be honest, but I will tell you that those fellows who have had those properties for years and years, and have not paid *any* taxes on them, who deliberately hide them and avoid taxation, are pretty well contented with the present situation. So, when that bill was introduced the lobby at the State House was full of people who owned this class of property, and their attorneys, who were trying to head off and beat this legislation; and they accomplished their purpose.

In regard to our inheritance taxation, Vermont still adheres to the good old-fashioned rule, and we think it is absolutely right, that personal property should follow the domicile of the owner,

and we are not attempting to tax property owned by nonresident decedents. (Applause.) We do not believe we have the right to do so, and I am rather sorry to see our neighboring state of New Hampshire adopt a different course. They say they did it because they were obliged to do it, and possibly we shall come to that same situation, where we shall be obliged to do that same thing, simply to protect ourselves against what the other states are doing on either side of us; but, at the same time, gentlemen of the convention, I believe that the principle that we have adopted and are today maintaining is absolutely the correct one, and that we should not bother with what we happen to find of a man's estate, who during life was a nonresident, because I think it properly belongs to the state of domicile.

Now, in regard to bank stock: in my opinion bank stock in our state is grossly overtaxed, because we can find it and the man who owns it cannot hide it; consequently it is taxed under our general property tax. A person owning bank stock in our state today is not getting over two and one-half, three or sometimes four per cent. The result is that all our banking capital is being driven into the hands of banking combinations. A person cannot own bank stock who depends simply and purely on the income of that bank stock for a living. A man dies and leaves his wife ten thousand dollars of bank stock, upon which she is dependent, to some extent, for her livelihood; the only thing she can do is to sell it, and at a sacrifice.

We have had considerable discussion in our state in regard to the taxation of automobiles. Our present system is a system of registration; we tax an automobile just the same, whether it is driven ten miles or whether it is driven twenty thousand miles. We tax them upon the horsepower, and this results in great inequality, because the object of automobile taxation, as I conceive it, is to compensate the state for the road which it wears out, and you can see immediately that such a system as ours is not equitable and works out an inequality between the small, light car—the car that travels a small road mileage—and the heavy car that travels fifteen, twenty or twenty-five thousand miles a season. Now, there has been considerable discussion of the matter and in our state we have felt that perhaps the gasoline tax was the most equitable way. The car with the high mileage wears out more road than the one with low mileage, and uses proportionally more gasoline. The same relation exists between a heavy and light car. It seems to me that this is an equitable way of getting at the present inequality, and it seems that it would work out proportionately.

We have a lot of tax problems in Vermont, little state though we are. Our problems seem to us to be just as big and just as vital and fundamental as the tax problems of any other state; and

I have confidence that eventually, somehow, some way, these inequalities, these injustices, will be ironed out, but I do not believe we shall ever see the time in this country, or in any other, when absolute perfection in taxation will have been achieved.

CHAIRMAN BLISS: The next on the program is Alexander Holmes, Deputy Commissioner of the Department of Corporations and Taxation of Massachusetts.

### A MASSACHUSETTS PROBLEM

ALEXANDER HOLMES

Deputy Commissioner of Taxation of Massachusetts

A most disconcerting problem in Massachusetts, and one that probably is not unknown in other parts of New England, arises from the steady, persistent increase in expenditures for public purposes. During the last ten years the annual maintenance charges in the cities and towns of Massachusetts have increased from eighty millions to more than one hundred and sixty millions. State taxes in the same time have increased from seven millions to fourteen, and county taxes from four millions to six, or, to put it another way, in ten years the annual current charges against revenue in the cities and towns have increased one hundred per cent, the state tax has increased one hundred per cent, and county taxes more than fifty per cent.

In the same period our growth in population is but fifteen per cent, and our assessed values of real estate in the entire Commonwealth have increased but forty-six per cent.

Somewhat in anticipation of this condition of affairs, Massachusetts prepared herself with two tax measures that in yield of revenue have more than met the expectations of conservative tax authorities.

Our modified income tax, beginning in 1917 with a yield of twelve and one-half millions, nearly reached seventeen millions in 1920, about doubling the amount received from the local assessment of intangibles in 1916.

Our business excise tax, in operation last year for the first time, produced two and one-half millions more for distribution to cities and towns than did the franchise tax which it displaced.

While the prime object of these two tax measures was to secure a more equitable tax upon intangibles and business rather than additional yield of revenue, nevertheless additional revenue was expected, and in fact realized. It is estimated that eleven millions of revenue are now available for cities and towns in excess of the revenue that would have been received from the same sources had the old laws remained in force.

During this same period our state revenues have shown a normal gain and have done their fair share in meeting the new conditions of increased expenditure. In passing, it might be mentioned that any disturbance in our taxation of national bank shares would mean a disturbance of three millions of revenue, two millions of which goes directly to cities and towns. In spite of all this preparation, our local tax rates which produce the bulk of our revenue and which fall largely upon real estate, have shown a tendency to touch hitherto unknown high places. In 1920 we had one high rate of \$42 a thousand. Nine cities and fifty-four towns could only meet their current charges by establishing rates above \$30 per thousand, while twenty-two cities and ninety-five towns were between \$25 and \$30, rates which had never been reached by any municipality up to 1910. Seven cities and ninety-two towns have established rates between \$20 and \$25, and there is now no city under \$20.

The obvious remedy for this state of affairs is to apply the panacea for the cure of all ills of taxation and spend less money. Our overhead is somewhat firmly fixed upon us and can only be substantially reduced by the united efforts of the entire community. It is mildly suggested that if our tax association could somehow find itself recorded upon the side of economy, we should not only be doing some service to our constituents but, at the same time, a good turn for ourselves, in relieving ourselves from the necessity of solving some difficult problems in taxation. Even though we be charged with attempting to stop the wheels of progress, we should remember that those who landed at Plymouth Rock made new progress in civil government while going without most of the necessities; and there is always some progress to be made by inculcating a spirit of self-reliance in individuals and families in providing for their own wants rather than having them supplied at public expense.

At any rate, real estate will not long be able to sustain increased taxation, and if the expenditures continue, new sources of revenue must be found. This means for us in Massachusetts a general income tax, bringing into the taxable class all incomes which Massachusetts has hitherto regarded as sacred and not to be brought within the purview of the assessor. All other suggested remedies seem to be but temporary expedients. The whole problem is somewhat further complicated by the fact that while Massachusetts citizens are paying in yearly taxes to their own state and municipalities the sum of more than one hundred and ninety-six millions of dollars, they at the same time are more or less cheerfully paying to the federal authorities something like two hundred and fifty-nine millions. There are signs, of late, however, that the cheering is somewhat subsiding.

## LOCAL TAX RATES IN MASSACHUSETTS

Years.	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920
Lowest Rate.	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$4.50	\$5.00	\$2.50	\$5.00	\$8.50
Rates below \$10.										
Cities . . . .	..	..	..	..	..	..	..	..	..	..
Towns . . . .	19	15	11	11	8	11	9	11	7	3
Rates \$10 and under \$15.										
Cities . . . .	..	..	..	..	..	..	..	..	..	..
Towns . . . .	87	81	69	57	52	40	38	52	34	12
Rates \$15 and under \$20.										
Cities . . . .	27	25	17	13	9	12	9	6	4	..
Towns . . . .	168	164	156	144	147	124	135	122	94	60
Rates \$20 and under \$25.										
Cities . . . .	6	8	16	19	26	24	27	26	16	7
Towns . . . .	45	57	77	98	105	132	118	107	128	92
Rates \$25 and under \$30.										
Cities . . . .	..	..	..	1	..	..	1	6	18	22
Towns . . . .	2	3	7	10	5	10	16	22	49	95
Rates \$30 and above.										
Cities . . . .	..	..	..	..	..	..	..	..	..	9
Towns . . . .	..	..	..	..	1	..	1	2	4	54
Highest Rate.	\$26.00	\$28.30	\$27.60	\$26.00	\$30.00	\$28.00	\$30.00	\$42.00	\$31.00	\$42.00

CHAIRMAN BLISS: We will now hear from Edward L. Leahy, of the board of state tax commissioners of Rhode Island.

EDWARD L. LEAHY of Rhode Island: Mr. Chairman and gentlemen of the conference: Until a few years ago we had in Rhode Island a practice among the transportation companies to issue passes to the members of the general assembly, both by rail and water. These passes entitled members of the assembly to free transportation to any point in the state. One of the members of the Senate built a passenger boat to run from his town up to the city of Providence, the capital. Shortly after that he leased the boat to a transportation company, and the company, following the usual custom, issued to the senator a pass. A couple of years after that a bill was introduced in the Rhode Island Senate, prohibiting the issuance of such passes. When the matter was under discussion before the Senate, the senator in question became peeved because reference had been made to the fact that he was using a pass upon the boat, and he jumped up somewhat excitedly and

yelled to the president: "Mr. President, why can't I use my pass; I built the damn boat."

Now, while the subject of the Rhode Island tax act is under discussion, I feel that Governor Bliss is the man who should be called upon to explain it, for the reason that he wrote the "damn" law. Over in our state the "governor" is a rather important personage. He is chairman of the board of tax commissioners and, by virtue thereof, the director-general of the department; for the past three or four years he has been working out the rehabilitation and reorganization of our entire system of street railways; he runs the Rhode Island State College; and he is a very influential man about the state house.

The subject assigned to me this morning is that of Rhode Island's problems. It is with some difficulty that I have been able to prepare anything for publication in the printed proceedings which would be of general interest, and it is much more difficult to attempt to talk about it for the reason that Rhode Island has no really serious problem. Such problems as we have are more of local importance than otherwise. I suppose I ought to knock on wood when I say that, because we do not know how long it is going to last. We have practically completed our work for this year, and then we got out of the state as fast as we could and came up here. I think we can safely say this, however, that the Tax Act of 1912, under which we are now operating, has more than exceeded the highest hopes and expectations of those who framed the law, in that it has produced sufficient revenue to meet all the state requirements, and has brought about a more fair and more equitable distribution of the burdens of the state; and it has been administered easily, economically, and without any undue inconvenience to the taxpayer.

The two principal revenue features of our law are the state tax on cities and towns, which is assessed at the rate of nine cents on each one hundred dollars of the locally assessed valuation, and the tax of four mills upon the corporate excess or the intangible value of manufacturing, mercantile and miscellaneous corporations. The principal defects in the state tax provisions are evidently common to all other states having that form of taxation, namely, the failure to tax all property which is taxable and the failure to secure equal valuation. In Rhode Island we have thirty-nine separate taxing jurisdictions, each jurisdiction fixing its own tax rate, within certain limitations, and in nearly all cases electing its assessors by popular vote. The law requires that all ratable property shall be assessed at its full and fair cash value, real estate and tangible personal property to be assessed at the rate fixed by the municipality, and intangible property to be assessed at the flat rate of four mills. Full and fair cash value does not mean the same to all the

assessors, and consequently we have inequalities such as they have in other states. No two locations use the same method of arriving at valuations, and the valuations may be said to vary from sixty-five per cent up to one hundred per cent of full value, consequently, the town which assesses on a basis of one hundred per cent is at a serious disadvantage with the town which assesses at a lower percentage. The demand for additional revenue in the towns during the last few years has brought about an improvement in the matter of local assessments, but the tendency generally has been to keep down the valuations and thus reduce the state tax, and then to increase the local rate for the purpose of providing sufficient funds to take care of local activities. A continuation and perhaps a further extension of this evil has been practically encouraged by the last legislature, because of the fact that the legislature has increased the limit upon the local tax rate, permitting localities now to tax not in excess of twenty-five dollars per thousand, whereas the old limit was fifteen dollars per thousand. The board of tax commissioners believes that this is bad legislation, in that it tends to increase those evils against which we have been contending. While this problem is not perhaps as acute with us as it is in some of the other states, it is a condition which we feel should be remedied. The best plan in the minds of some, to remedy this condition, is state control or state equalization. We have at the present time no state control over local assessments. We can act in our associations with the local assessors in an advisory capacity only. It is true that through suggestion, by the use of diplomacy and by an avoidance of anything which smacks of coercion, we have been able to get the local assessors to improve valuations; nevertheless, it would seem that in order to produce proper results state control is necessary. Rhode Island, as you know, is a very conservative state; it is not an easy matter to make changes in our laws. The local jurisdictions are very sensitive of their privileges, and the people generally resent coercion. We have not yet ratified the Eighteenth Amendment. State supervision, if it ever comes to us at all, will only come after a somewhat lengthy period of education and discussion, and a realization on the part of taxpayers that every man can be made to pull his weight in the boat only when all property which should be taxed is taxed, and when it is taxed at the full and fair cash value as required by law.

The other important feature of our law is the state taxation of corporate excess or the intangible corporate value. This law has from the very beginning, in 1912, produced satisfactory results, and during the past year has produced approximately twenty per cent of our total state revenue. It is the intention of the law to reach the intangible value of the corporation—that part of the value of the corporation which is not taxed locally in the form of

real estate or tangible personalty. Perhaps I had better read the statute to you, for while it may take a little time, I think it worth while because some people have thought that the courage of the legislature in enacting certain sections of this law, and the nerve of the board of tax commissioners in attempting to administer it, have gained world-wide interest.

Section 11 of Chapter 769 of the Public Laws of 1912, as amended, reads as follows:

"Section 11. Each of the corporations required to make the return aforesaid shall be taxed upon the value of its corporate excess, which shall be determined by the board of tax commissioners, for the purposes of assessment and taxation, as follows:

(1) To the value of the total number of its shares outstanding determined as aforesaid, there shall be added, as part of the measure of value of the property of such corporation: (a) the total value of its outstanding bonded indebtedness, if any; (b) the total value of its outstanding indebtedness evidenced by debentures, if any; (c) the total value of its other indebtedness, if any, incurred for the acquisition of real estate or of tangible personal property, and such other of its indebtedness as such corporation shall return; (d) and such other of its indebtedness, if any, as is a cover for a division of its profits.

(2) In the case of corporations also carrying on business outside of this state, a portion of the value ascertained under the prior clause shall be apportioned to this state as follows: In the case of corporations deriving their profits principally from the ownership, sale, or rental of real estate, and in the case of manufacturing corporations and such other corporations as derive their profits principally from the sale or use of tangible personal property, such a proportion as the fair cash value of their real estate and tangible personal property in this state on December thirty-first next preceding bears to the fair cash value of their entire real estate and tangible personal property then used in their business, without any deduction on account of any mortgage or incumbrance thereon; in the case of corporations deriving their profits principally from the holding or sale of intangible property, such a proportion as their gross receipts for the year ending on December thirty-first next preceding in this state bears to their total gross receipts for such year, both within and without this state; and in any case to which these proportions are not equitably applicable, in such proportion as is equitable. And said board shall have power to require, from time to time, such reports, sworn to as hereinbefore provided, as will give said board the information necessary to make said apportionment.

(3) From the total value ascertained under the first clause of this section; or, in the case of corporations also carrying on business outside of this state, from the portion of the value apportioned to this state under the next preceding clause; there shall be deducted the assessed value of their real estate and tangible personal property located in this state as last assessed for local or



state taxation, including in the deduction the value of any such property exempt from taxation by local authority.

(4) Said board shall also make such allowance for such property as is exempt from taxation, or is not taxable in this state, by deducting it from the entire value ascertained under the first clause of this section, or from the portion assigned to this state, or from the portion assigned to other jurisdictions, as the circumstances make equitable.

(5) The remainder shall constitute the value of the 'corporate excess', for the taxation of said corporation." \* \* \*

In the administration of this law it is perfectly natural that some problems should arise. Some problems have arisen, not of any serious nature, involving, for instance, the matter of whether certain forms of indebtedness should be added; and there have been some problems arising from the valuation of the capital stock; but it is a significant fact that during the ten years in which this law has been in operation, the value of the capital stock of no corporation, as determined by the board, has been set aside. The feature of the law requiring the most care is that of determining the value of the corporate excess which should be attributed to Rhode Island, in the case of those corporations doing an interstate business. The provisions of the law as read set forth the method prescribed, and that has been frequently referred to as the "discretionary method". The law as originally enacted did not contain this discretionary feature in such form as to warrant the board of tax commissioners in making use of it, for the reason that it formerly read: "In any other case to which these proportions are not equitably applicable, then in such proportion as is equitable." This apparently would permit discrimination, and consequently, upon the recommendation of the commissioners, the word "other" was stricken out by the legislature, and the law now stands as reading: "In any case to which these proportions are not equitably applicable, in such proportion as is equitable."

The apportionment of these values is, of course, somewhat difficult and from time to time since the passage of the act in 1912 the constitutionality of the method of apportionment was frequently raised before the board, but because of the reasonable and equitable results attained by the board, the question was not presented for the determination of the court until last year when several corporations, mostly the packing houses, appealed from the assessments made by the board, alleging among other things, that the statute was unconditional in that it permitted the taxation of property not located in Rhode Island; that it delegated to the board of tax commissioners the power of taxation; and that it permitted discrimination among corporations of the same class. The decision of the court was, however, favorable to the state and the constitutionality of the act was upheld. In view of the difficulties experi-

enced by many states in attempting to reach proper results by the use of fixed rules of apportionment, the wisdom underlying this administrative feature of our act which provides no absolutely fixed method but imposes upon the commission the duty of making apportionments upon a fair and equitable basis, or in other words, in accordance with the facts in each case, seems to us to be manifest.

In 1916 Rhode Island incorporated in its taxation system the inheritance tax. This tax also has produced a considerable amount of revenue and has been administered very satisfactorily, both from the standpoint of the state and the taxpayers. Simplicity and equity are the touchstones of the successful administration of this law. If a decedent is a resident of the State of Rhode Island, all of his property, except real estate located outside of Rhode Island, is taxable; if a non-resident, only his real estate located in Rhode Island is taxable. Adherence to the common law maxim, *mobilia sequuntur personam*, has not permitted in this state the development of the theory of constructive or artificial situs, with its consequent perplexing problems. The method of taxing domestic corporations in Rhode Island has to a great extent facilitated the appraisal of securities owned by decedents for the purpose of assessing the inheritance tax. The law contemplates the immediate taxation of all transfers of property at death. This does not imply, of course, that each estate is presently taxable, for the peculiar provisions of a will may produce an impossible situation, but up to the present time there has been but one case in which the tax could not be presently determined. Occasionally adjustments have to be made of the tax assessed in certain cases upon future failure of contingencies, but the burden of making such adjustments is not imposed upon the state but upon the beneficiaries, thus obviating the necessity of keeping elaborate records, the use of which for reference purposes might not be necessary for many years in the future.

During the operation of our inheritance tax law for nearly six years, in only one instance has its interpretation been questioned. This case involved the question as to the allowance of the amount paid as a federal estate tax, as a deduction, in arriving at the value of the net estate in Rhode Island, upon which our tax was assessed. The commission ruled that the federal estate tax should not be deducted in valuing the net estate of a Rhode Island decedent, on the theory that the Rhode Island inheritance tax is based upon the value of the property of the decedent at the instant of death, which the laws of Rhode Island permit to be transferred, and the fact that the federal government also imposed a tax on this same base would not affect the right granted by the State of Rhode Island to transfer property or alter the devolution of property under our statutes. The commission contended that the federal government

could not interfere with the state's taxing power, notwithstanding the fact that it might use the same measure in determining a tax, but that the use of this measure by the federal government should not diminish the state's measure. The amount paid the federal government as an estate tax reduces the amount actually received by the beneficiaries of the estate. It does not, however, diminish the amount permitted under the Rhode Island laws to be transferred by the deceased to the beneficiaries, and as the amount permitted to be transferred is the base for the assessment of our inheritance tax the amount paid the federal government should not be deducted before computing our tax. The ruling of the board on this point was upheld by the Rhode Island supreme court in the case of *Hazard et al. v. Zenas W. Bliss*, reported in 113 Atlantic Reporter, page 169.

CHAIRMAN BLISS: We will hear from William H. Blodgett, state tax commissioner of the State of Connecticut.

WILLIAM H. BLODGETT of Connecticut: Mr. President and gentlemen of the National Tax Association and others: I fear Judge Leahy was interrupted in telling us about Governor Bliss' Rhode Island clam-bake, a distinctively delightful Rhode Island affair. In the course of his remarks he told of the Governor's varied activities in his home state; he might have told you also that the Governor is manager here. If any of you feel that there is any truth in that statement all you have to do is to get mixed up with the machinery of this conference. I have arranged with him so that I may speak as long as I choose. He has consented to that, so you will have a pleasant time for the immediate future.

I have been interested in New England problems as they have been presented to this conference, but I am constrained to wonder to what extent, if any, you who have come from distant states find your problems similar to those here. At Utah last year New Englanders heard some discussions of the migratory stock difficulties of the West and of your taxation of wild lands and vast areas, and it ran through my mind that I should be more interested in that if Pike's Peak were moved down to Connecticut. There are, however, basic and fundamental problems that are common. It certainly occurs to every one here that this old settled New England country is presenting fundamental problems of taxation to-day, and you from the West may fairly gather from this that your new country hasn't solved its problems yet, particularly if New England hasn't yet solved hers, in the hundreds of years in which New England people have been working to do so. Here is the old property tax. It is the same thing you are dealing with out in the West. We cannot quite reach up to the point of idealism in the application of a property tax law, and it is the same problem, when

you are trying to tax Pike's Peak and the vast areas of the West, as exists in preparing a law and applying it to the real estate of Connecticut. Through these conferences and discussions we may compare notes, we discuss ideals, but we are dealing always with human elements and divergent opinions, and these are to be with us always. Those who preceded me in discussing tax problems of other New England states seemed rather to bewail the fact that there is some selfishness in the jurisdictions represented by them. Perhaps there is in Connecticut. I doubt if my friends who have talked on this subject will be able to make tax-paying really a popular diversion, and perhaps it will be some years before people will cry out in anxiety and desire to pay taxes as babies cry for castoria. It is doubted whether we shall get there for a time or that we are soon to be free of that class, diminishing in its numbers, who are willing that the other fellow should pay, while they hide something of their own. This class furnishes a difficult taxation problem that seems always to be with us.

The problem of public expenditures and economy has come up here. I feel there is one battle-cry for the tax man, and I think we can well afford to hold it to the front—and that is that the taxpayer is getting more for his dollar paid in taxes in this country than he is getting for any other dollar he pays out. If that is not true, something is fundamentally wrong in our representative system of government. A dollar paid in taxes is the best dollar that is paid out by a taxpayer in this country. Taxes have greatly increased on account of the recent war, but there was great unanimity when this war was being carried on. It was worth every dollar that it cost, and more too, although it may be admitted that there were extravagances, some of them entirely unavoidable in the circumstances. Say to your taxpayer, "Here, you know in your heart that the dollar you pay in taxes is the best dollar that you spend," and the most of them will admit that is true.

It is said there has been great extravagance in the conduct of the federal government. I think that is true. They tell me that in Connecticut there is great extravagance in the conduct of state government; and I think there is extravagance there to some extent. Down in a little town in Connecticut where I live they tell me—some of the taxpayers—that there is extravagance in the local town government. I think that is true. But if those who complain will go back to their personal accounts six years ago and compare their expenses with those of to-day, they will invariably discover that there is at least the appearance of extravagance there also. Everyone knows this is true. It is likely that personal expenses have increased on the average as much as have the expenses of maintaining government. In the Connecticut general assembly many members who cry loudest for economy frequently have some

little schemes of their own which they desire to get through the appropriations committee. Each is willing to put his little plan through. He often wants one little appropriation of a pet character of his own. There is no use to be foolish about this thing. It is a hard definite proposition. If the appropriation committees respond to a healthy sentiment of the people whose money they are appropriating, they are discharging their responsible duties well. These several states are not defunct concerns at all. They are going onward with the forward march of progress, precisely as they were designed to do when they were established. What the end of these increases of appropriations is, no one knows. This is not saying one single word for extravagance, for there is opportunity always to pare down and cut out extravagance; there is always opportunity to stand in the way of new schemes and plans of spending public money; but on the other hand, public sentiment of these states comes in and is brought to bear on appropriation committees. It is irrepressible, and it ought to be irrepressible. If appropriations are made in response to a healthy demand of those states, and the problem of the appropriation committee is to find out whether it is such, who may in right or justice complain? That is the acid test in making appropriations.

Connecticut is a snug little state. It has been accused of being rather hard baked; they do not adopt ideas there that seem to go or don't go in other places. They say it is the land of steady habits. Some interpret this to mean that when Connecticut gets wrong it stays that way. In Connecticut our real estate is valued at one billion, three hundred and fifty-seven million dollars in round numbers. The tangible personal property is valued at two hundred and ninety-six millions, very close to two hundred and ninety-seven millions in round numbers. The intangible personal property listed for taxation is valued at one hundred and thirty-five millions of dollars. The total amount of money collected for the conduct of local government is substantially thirty-nine millions of dollars. The cost of the state government, in round figures, is fifteen millions of dollars, making all told a little over fifty-four millions of dollars or a little less than forty dollars per capita for the maintenance of state and local government. I have here an editorial from Oregon, a state with a few thousands less population than Connecticut; there, if the information at hand is correct, the cost of state and local government is fifty-four dollars per capita, and this is exclusive of inheritance taxes, special improvement taxes, and automobile license fees. That is a flat comparison; just a few thousand difference in population, yet the people of Oregon are paying substantially fifty-four dollars per capita and the people of Connecticut slightly less than forty dollars per capita. I read these figures with respect to the value of real estate, tan-

gible personal property and intangible property, with the purpose of presenting in the brief time allotted to me a problem in Connecticut taxation. It is the eternal problem of the intangibles; for intangibles are bearing in Connecticut only one and seventy-two hundredths per cent of the entire tax burden of that state. At a session of the Connecticut general assembly lately adjourned, I undertook to cause to be enacted a bill to tax intangibles, because Connecticut has never entered upon a serious effort to tax intangible property, either as a property tax or to tax investment income. Now, mind you, Connecticut is rather a peculiar state, and snug. The people there do not, except to a small extent, invest their money in real estate as an investment, as is done in the West. Connecticut investors buy stocks or bonds, and I think Connecticut may be compared as a wealthy state. It is densely populated, generally. They have mills and industries that are profitable; they have banking and insurance interests that are income-producing, and they are healthy enterprises to have within the borders of the state. Tax students generally agree that the basis of a tax is ability to pay, and yet our public-spirited men—men public-spirited to my personal knowledge—opposed this bill setting up machinery to uncover intangibles; some on the ground that you cannot tax intangibles, and others on the ground that you would raise more money for the state than the state needs. One could sympathize with the proposition that the bill would raise more money than needed, but it is most difficult to sympathize with the proposition that this sort of property should not or that it cannot be taxed either by imposition of a property tax or by the enactment of a tax on personal or investment income. One or the other in my judgment ought to obtain, and that is true, I assert, whether the state needs additional money or not. If it does not need additional money, then such property ought to be taxed for the relief of real estate from the burden it has carried altogether too long and for the benefit of the farmers on the hillsides of Connecticut and the home-builders in every city and town in the state. I do not care a whit whether the state taxes that intangible property by imposing a tax on investment income or whether it be taxed a low rate as a property tax. It can be discovered for taxing purposes about as readily under a bill imposing a property tax as under a bill imposing a personal income tax or a tax on investment income only. The bill proposed met a fate like that offered by my friend from Vermont; more people voted against it than voted for it. The president tells me my allotted time has expired. I thank you for your attention.

CHAIRMAN BLISS: The discussion of this part of the program will be omitted for the present and taken up at the end of the session. The next section of the program is Forestry Taxation,

and we are very fortunate indeed to have with us today Professor Fred R. Fairchild, and I will ask him to preside at this session.

PROFESSOR FRED R. FAIRCHILD, Presiding.

CHAIRMAN FAIRCHILD: I would suggest that the gentlemen in the back of the room take some of these seats up here in front. It will be an assistance to the speakers as well as to the chairman. If I had it to say to those responsible for the arrangement of this room, I would suggest that hereafter these easy tempting chairs be arranged in rows along the front and that the slippery objects be put further in the rear.

This association has always taken an active interest in the subject of forestry taxation. There was a discussion of that topic during the first meeting in 1907; a whole session was given to the problem at the second meeting in Toronto in 1908; and in 1914 a committee of this association, which had been studying the subject for the past year, presented a somewhat complete report on the subject. I happen to have here a few extra copies of the report of that committee, which I shall leave on the desk, and which may be obtained by anyone who is interested, at the close of the session. The problem of forestry taxation is a big one, on account of the peculiar nature of forest property, and peculiarly it is best understood by the foresters, and so, in making up the program for this topic, we have found it advisable to call heavily upon the services of our forestry experts. I shall call first upon my colleague Mr. H. H. Chapman, professor of forestry of Yale University — Mr. Chapman.

H. H. CHAPMAN: Ladies and gentlemen: This subject of forestry taxation must necessarily be of great interest to the New England delegates as well as to others, but more especially to New England since it is a fact that of the area of real estate in these six states, from fifty to seventy-five per cent will be affected by any method of taxation which applies to forest property, the agricultural property and city property being in most, and I think in all instances with the possible exception of Rhode Island, less than fifty per cent of the total area.

## THE TAXATION OF FOREST PROPERTY

HERMAN H. CHAPMAN

Harriman Professor of Forest Management, Yale University

Forest taxation is an integral part of the problem of securing larger revenue from taxes to support the increasing demands of modern life. But it is a phase of a much deeper problem, that of increasing the taxable resources of the nation and securing equi-

table distribution of the tax burden, upon which alone can rest any permanent increase in revenue.

The country at large is faced by a condition of depletion of timber resources, verging on exhaustion, and accompanied by wholesale destruction of the productive capacity of forest producing lands. Should this process continue it will lead to the impoverishment of entire regions, and to economic loss whose effect will be felt in higher prices and higher taxes for all, regardless of locality.

The conviction is slowly taking form that it is impossible either to devote lands to agricultural use which are suitable only for timber production, or to employ substitutes universally for wood, without destroying property values and prosperity over entire regions, raising the basic prices of all commodities, and permanently lowering the standard of living.

Based on a national income estimated at between thirty-five and forty billion dollars, the use of wood, directly and indirectly, now represents between fifteen and twenty-five per cent of this income. Industries exclusively devoted to wood total seven and one-half per cent; those whose continued existence is at present dependent on wood, such as printing and mining, another seven and one-half per cent; while those which use wood as an important and probably indispensable material in some portion of the industry include the entire field of agriculture and of transportation, together with a large percent of all manufacturing industries. Five per cent is an exceedingly low figure to add for these industries. It can hardly be disputed that permanent ruin of our timber resources would mean a permanent shrinkage in our national income of over ten per cent. It might be double this figure.

This threatened condition must be met by adequate measures for relief, looking to the restoration of productiveness of forest lands. Among these measures are universal and efficient fire protection, prevention of complete denudation of true forest soils, and public ownership of forests. But a complete solution will not be found unless the vast areas of forest and cut-over lands now in private ownership can be brought back to, and kept in a condition of productiveness.

In so far as existing systems of taxation tend to discourage efforts looking to forest production by these owners, such conditions demand a remedy. The solution of this problem would have two ultimate results:

*First:* If the growing of new crops of timber on denuded lands is successfully achieved, this property will ultimately produce, in taxes, a larger direct revenue than it can possibly continue to yield in its barren condition, no matter what system of taxation is imposed in either case.



*Second:* The increase in taxable resources, and consequently in taxes, indirectly resulting from this timber supply will greatly exceed that from the forest property itself. This takes the form of

1. Industries dependent on timber, with their taxable assets.
2. Increased population, with the general increase in housing and trade necessitated thereby.
3. Increased value of agricultural and of urban property, due to these general conditions.

The general property tax has not in the past operated unfavorably against the holding of property in mature timber, for two reasons: low valuations of standing timber, and absence of expenditures for forest productoin. In fact, taxes, coupled in some instances with a small sum—seldom over two cents per acre—spent on fire protection, constituted practically the only expense attached to holding such property, which was valued solely for its mature timber.

But the assumption of definite obligations to re-forest and protect cut-over lands for periods of thirty to fifty years, or even longer, means a large cumulative expense in the end. It is worth mentioning that this expense, though large, is less than that required to carry or hold mature timber for an equal period, for the latter is not increasing in volume, may be even retrograding, and has a high initial assessed value. But the owner of such timber can find relief from taxation by cutting it, while for the owner of growing timber no such relief is possible.

The specific reason for the distinction in taxation necessary between forest property and other forms of property lies in the character of the income from timber crops. Underlying the valuation of all productive property, is the principle that value is derived from discounted expected future net income. This finds expression as sale value, and is the basis of appraised values and of assessed values. But for most forms of property, this income is either actually being earned annually, or if the property is unimproved, it is possible to place it in condition to earn annual income within a reasonably short period, by developing it. With forest crops on denuded land, this condition does not hold. The growing crop of timber produces practically no net revenue until it is mature and is cut. But the property pays annual taxes throughout this entire period, on its assessed value, which may, and frequently is, made to include the value of young timber as well as of the land.

Because of this condition of unavoidably deferred income, a process of double taxation takes place. First, the accumulating growth of wood, which is the source of income from the property, is capital which resembles savings; increasing the value of the property steadily, until finally cut, in a manner similar to that of

any investment whose income is deferred over periods of considerable length.

This increasing capital value, under the general property tax is assessed annually, and its assessed value is raised or adjusted frequently, without regard to the fact that this wood capital, the hoarded income of the land, cannot be withdrawn to meet these taxes while it is yet immature, as might be done with other forms of savings. Instead of the tax being paid only upon the original capital which produces this income, the income itself, in the form of saved or accumulating capital, is also taxed, and taxed annually, and these taxes must be paid from other sources and entered as a charge against the enterprise.

Second, according to commonly accepted practice in all such investments, during the period preceding their establishment as an income-producing property, such outlay must bear interest until met from income, and this at a reasonable rate, compounded annually.

From this double source, the value of the taxes prepaid in advance of income may easily absorb from fifty to one hundred per cent of the stumpage value of the timber at time of cutting. The severity of the burden so imposed on the industry of forest production is mitigated only by low assessed values, or by early cutting of partly matured timber, before it reaches the size at which the average or mean annual yield has culminated.

While the tendency of the general property tax to force the cutting of timber which is fully mature has a beneficial aspect in bringing this timber into use, this same tendency, greatly aggravated, prevents the replacement of the timber thus removed; and here is where the shoe pinches.

The general remedy for this condition lies in recognizing growing timber for what it is, increase in the value of the capital, representing future income, which income alone gives the basis for taxation; and to cease to regard it as capital with a fixed taxable income-producing value similar to that of land. This involves separation of the value of land from that of the timber standing or growing upon it—a principle recognized in the case of growing crops which take but one or two years to mature; but not yet accepted for timber crops because of the failure of the public to recognize timber as a crop.

Just so long as this system of annual taxation is continued on forest capital which produces a long deferred income, the treatment of timber as an exhaustible resource or mine will continue, and its ultimate exhaustion will logically follow. Practically all existing or proposed laws for the taxation of forest property are based on the separation of these timber values from that of land, and their separate taxation. These laws propose to levy an annual

tax on land, but to defer the taxation of timber values until the timber is grown to maturity. The land tax is to furnish the needed annual revenue to towns, while the process of postponing the tax on timber values is the specific measure intended to do away with double taxation on this class of property.

It is useless to discuss the detailed provisions of such laws unless the fundamental problem is understood and the principles accepted which determine their details. The elements of this problem are:

1. The conflict between the attitude of the owner as an investor, and the public as beneficiary of taxation.
2. The taxing of income when received, versus the taxing of capital or discounted income value of property.
3. Discount, or compound interest, as an element affecting the total of taxes to be paid on forest property.

To solve the first of these problems requires a recognition by the public that forest property should not be taxed in such a manner as to discourage the undertaking of what is in reality a new industry in America—forest production; hence a departure from the general property tax is fully justified if the public cares to continue the use of wood.

The second problem points the way for this departure by substituting the products tax, paid out of cash income, for the property tax, at least in part. But, since the tax on land is retained, it is the third problem upon which really depends the terms, amounts or rates of taxation, which are the crux of the matter.

When income is annual, taxes and values maintain a consistent relation. But when income is intermittent or deferred, values rise previous to receipt of this income, and fall suddenly, by the amount of income received, when it is paid. Taxes, if levied and collected only on this income at time of payment, can correspond exactly in amount and effect with annual taxes. But if levied on the value of the capital, just what constitutes such equality? Apparently this would be the ultimate absorption of an equal per cent of total value, either of income or of capital, considered separately. When income is deferred its value is discounted. The value of forest land, separate from that of timber, is so determined.

If taxation of other property yielding annual income absorbs twenty per cent of this income, twenty per cent of the forest income is the proper amount to pay. But at five per cent interest, or discount rate, this is equivalent to one per cent of capital value annually. When this capital value, for land, is properly determined by *discounting* future income, a tax of one per cent on the value of the land alone, continued during the entire crop period, and without any further taxes on timber, would be equivalent to

full taxation of the property. Or, if no tax whatever is laid on the land, the timber can stand a twenty per cent products tax when cut, which in itself would be full taxation of both land and timber.

These two forms of taxation *yield entirely different amounts of money*. But the difference in total cash taxes paid is exactly proportional to the factor of discount or interest, regarding taxes paid on land in advance of cutting the timber as prepaid or discounted. In fact, a forest which has been brought to a condition of so-called sustained yield, in which the values are produced annually by a succession of crops, will yield annually, per acre, the same cash taxes as a single crop of trees will yield, per acre, when cut at the end of the crop period or rotation: e. g. A tract of fifty acres in a fifty-year rotation, if producing annually one acre of mature timber worth \$168.50, will yield, on a twenty per cent products tax, \$33.70 annually in taxes. This land, based on discounted future net income at five per cent, is worth \$10 per acre. A one per cent capital tax on fifty acres of land at this value yields \$5 annual taxes, or 14.8 per cent of that yielded by the fully developed forest property, permanently. Incidentally, this same land, unless it is to be developed as forest property, may be worth about fifty cents per acre, and the property yield annual taxes of twenty-five cents, unless grossly overvalued.

But this \$5 for the fifty acres, or ten cents per acre of taxes annually paid on land, if begun on bare soil and continued for the fifty years, means that this property yields taxes for half a century before the same forest would yield a cent if taxed on its income alone, and in that time \$5 per acre cash has been paid in advance of income, in a series of installments running back the full fifty years. The crop is now merchantable, the *cash* taxes paid representing  $\frac{5}{168.50}$  or three per cent of its value as against twenty per cent if paid at that time from income: yet, on land which has actually yielded taxes as indicated, for fifty years, while the crop was being grown, the prepayment of these land taxes, charged with compound interest, constitutes a tax burden exactly equivalent to the \$33.70 cash income tax if paid at the end of the fifty-year period. The difference in total cash paid is the difference in discount values.

Thus the principle involved is that of actually paying taxes in advance of income, *at a discounted value*; equitable for the forest owner—but will the public stand for it? and to what extent? Why should they object? Because on the one hand, the land tax alone evidently means a great reduction in total cash revenue, over present taxes, or over products taxes, and the constant impression is conveyed that timber is escaping taxation. On the other hand, a products tax alone means wholly impractical irregularity and postponement of income, an ultimate large products tax on stump-

age, difficulties of collection, and the exemption of both land and standing timber from annual taxation under the general property tax, thus requiring very rigid and exact classification of lands.

For these reasons, the efforts to mitigate the severity of taxation of forest property take the form of retaining the annual land tax, but substituting the products tax for annual taxes on accumulated or "saved" timber values. This involves two adjustments: first, the sum of the two forms of taxation should not exceed the fair total for each if exclusively used; second, the owner should, at least in part, be allowed the benefit of the principle of discount on his "prepaid" taxes, in determining what this total should be. It may be said in passing that this principle is totally ignored by the present system employed in determining the federal profits tax on the holdings and operations of lumber companies.

This combination of land and products tax is necessary, too, as a concession to the principle universally accepted that *past* costs of production cannot be subtracted in determining *value* of property, but only *future* costs can thus be deducted — and as timber grows toward maturity, and these costs of production begin to represent past investments, the pressure to reassess existing created capital values becomes extreme and the public tends to forget any previous condition or understanding under which these values were created. This is the main reason why such legislation so often takes the form of a contract between the owner and the public by which the *owner* is to be protected and assured that the bargain will hold. If by the imposition of a products tax the public can be made to see that timber values as well as mere land values are producing revenue, it may be possible to secure the universal adoption of the system, which is the ultimate goal of all efforts. Without discussing the effect of different rates of interest or discount, and of cost of production or crop expenses, it is sufficient to say that such calculations as have been made indicate that when land is taxed annually at its full value, a products tax should not exceed six per cent of the stumpage value of the timber when cut, and even this is justified largely by the general questions of public economy involved rather than by financial calculations. When, as in the case of tax laws providing for contracts, the value of land may be assessed below that of similar lands, as a concession to secure restocking, the ultimate products tax may be set at a correspondingly higher figure, but probably not over fifteen per cent.

Between the recognition of these general principles and their application in practice a gulf intervenes which has so far not been successfully bridged, though repeated attempts are being made. The chief obstacle is the existence, still, of a large body of mature timber in some states, which has cost but little to produce and

which is on the tax lists as taxable property, and the fear that in some way the advocates of tax reform are attempting to relieve the owners of this property from the payment of the accustomed taxes thereon. Rather than see a dollar of available taxes lost, on such timber, legislators are perfectly willing to postpone indefinitely the adoption of a better system of forest taxation in general. So widespread is this attitude that it has been necessary to provide in most proposed laws for the continuance of the system of taxing mature timber annually, and to try to distinguish between this class of property and that containing only young and growing trees.

This raises the question as to whether it will *ever* be possible or advisable in the future to relieve mature timber of annual taxation. If not, and if such taxes are eventually to be imposed on timber artificially grown or produced, in addition to a products tax and a land tax, it is a measure whose effects would be to force the owner to cut, unless he is in a position to maintain such property as a luxury forest or private park. The state by imposing these additional taxes, would in effect determine the size of timber which the average owner would be permitted to grow.

For the present, however, no general law on forest taxation stands much chance of passage unless it continues, temporarily at least, the annual taxation of mature timber. But how is mature timber to be distinguished? This may be based on value or merchantable character, age, size, or volume of stand per acre. If timber reaches merchantable values at small sizes because of local markets, the products tax should take care of it. The imposition of annual or double taxation, deliberately, should be only to prevent the retention of timber actually mature and ready to cut as a crop. In addition, value or merchantable character is wholly unsatisfactory, since it varies with the locality and economic factors, independent of the stand itself.

Age is an impractical basis, both because it is difficult to ascertain on standing timber, and varies with site, for trees of the same size, and because stands may be composed of mixed ages.

Size can be applied only to the individual tree, and in mixed stands or broken and scattered stands would entail a tree-to-tree measurement, quite impractical even in timber estimating.

Volume per acre, while admittedly an estimate for standing timber, is more definitely measurable than value itself, hence it is a practicable basis for determining what timber shall be taxed. It is not practicable to subdivide area units for the purpose of taxing small bodies of mature timber, hence the minimum stand per acre requiring the taxation of the mature timber should be an *average* stand for the area assessed.

But the most serious effect of this apparently necessary contin-

uance of annual taxation on mature timber is to encourage a continuance of the general policy of requiring special classification of forest lands, at the option of the owner, as a prerequisite of applying any modified system of taxation to forest property. As long as forest tax reform is tied up with an optional land classification it can be regarded as only a temporary and incomplete solution of the problem, tending to postpone its general adoption. This special classification, it is true, permits of separating lands not containing mature timber from those which do, and listing only the former lands—in which case not only would the mature timber still be subject to the general property tax, but all other forest lands not so listed, or on which owners cannot or do not comply with the *terms* required for listing. For this classification and listing is usually based on another pretext, namely, the requirements that such lands be not merely forest lands, but be actually reforested before classification. In return for thus securing productiveness the owner will be given the “privilege” of a proper system of taxing such property, or even may secure a reduction in land valuation during the continuance of proper management, which, even when combined with a products tax which no others but the classified owners have to pay, tends to place his taxes on an equitable basis, and will of course be an improvement over annual taxation of timber values.

Just why is it necessary to confine the operation of such a law, to owners who practice forestry? Is not the essential feature applicable whether or not an owner replants or restocks his lands? For, if timber values are to be separately treated, and if forest land should be taxed at the average value of such lands, the owner who raises timber gets all the benefit of the reform besides producing income with which to pay his land tax, while the nonproductive land is still assessed regardless of its impoverished condition. This is a powerful inducement to practice forestry, which in itself should be sufficient to bring about a large measure of production, justifying its adoption as a universal reform, regardless of other legislation.

There exist, then, two obstacles to the accomplishment of this general legislation: first, the difficulty of correlating it with the desire to tax mature timber; second, the tendency to grant special privileges in valuation in order to further stimulate production. The first obstacle must be met by providing a method of transition by which the classification of timber as mature, when temporarily continued, can be shifted to the indicated basis of volume per acre. Under no circumstances should the method of special classification and voluntary listing of lands be adopted as the means of solving both of these problems.

This transition, if general, requires a gradual imposition of the

products tax, increasing by fixed periods from an initial one or two per cent to the maximum, in order that timber shall not pay the full products tax which has already paid its share of annual taxes. The process of transition consists in requiring revaluation of all forest property by which the separation of land and timber values is made. This process may require a decade for completion. Meanwhile, or previous to the proper revaluation of any property, owners cutting timber and paying products taxes thereon can be given the benefit of an automatic reduction in assessed values corresponding with the stumpage values on which such products taxes are paid. This will stimulate the process of adjusting values on the new basis.

If, in addition to this legislation, or as a substitute for it, special classification is provided for, whatever privileges are offered entail necessary limitations. Reduction of land values, and the fixing of a limit for such values over a period of years or during the maintenance of classification is the measure most commonly advocated. But this carries with it a limitation of total value per acre of lands to be so classified which in a proposed Massachusetts law is set at \$25 for land and timber. Next, the law may not apply until proper stocking is secured on the land; and in the Massachusetts law referred to, the volume of the stand when the land is classified cannot exceed fifteen cords per acre, but the area in turn must give promise of ultimately producing ten to twenty thousand feet, board measure, per acre. Ordinarily laws of this character, in spite of the efforts expended in framing them, proved to be full of complicated requirements affecting classification and listing, management and cutting, valuation and inspection, so that they broke down in practice. Much greater simplicity is required if they are to be practical.

As an illustration of the principles embodied in special classification by which, through contract relations, guarantees of low, fixed assessed values are given in return for definite measures by the owner by which the land is restocked with timber, the most recent amendment to the law of Louisiana on this subject is quoted:

"GENERAL FOREST CONSERVATION LAW  
ACT 232 OF 1920

"SECTION 11. *Low Assessment of Land under Contract with  
State for Forest Culture.*

"Be it further enacted, etc. That in order to encourage the practice of forest culture in Louisiana, when the owner or owners of any land which has been denuded of trees or any other land the assessed value of which for state taxation shall not at the time of application exceed the sum of \$10 per acre, shall contract in writing with the Department of Conservation to supervise



planting or growing upon said land suitable and useful timber trees in such manner as the Department shall prescribe, protect the said land from fires, so far as practical, and to maintain the trees so planted or grown upon it in a live and thrifty condition for the periods thereafter specified, and to cut or remove from said land within that time no tree or trees except as permitted in the said contract; it shall be lawful for the Board of State Affairs and the assessors of the several parishes, and they are hereby required upon the recommendation of the Commissioner of Conservation, to fix an assessed valuation per acre of not less than the assessed valuation of such lands at the time of the execution of such contract, the said assessed valuation to remain fixed and unchangeable for the period of the contract entered into by such land owner with the Department of Conservation, the Department of Conservation being vested with discretion to execute such contracts as the nature and character of such lands may justify, for the periods of time ranging from 15 to 40 years, provided that no owner shall be guaranteed against an assessment of less than five dollars per acre.

"Any land owner who has made such a contract with the State shall be entitled to demand an annual inspection by the Commissioner of Conservation or his agents, and a certificate as to whether the contract has been carried out. At the end of the contract entered into by the land owner with the Department of Conservation the said land shall be restored to the assessment roll and shall be thenceforth taxed the same as other similar lands. If at any time within the contract period the owner or owners of the said land shall fail to maintain it in all respects according to the written agreement entered into by the owner and upon which the said land was given a fixed assessment value for a fixed number of years the said land shall be restored to the assessment roll and thenceforth taxed the same as other similar lands, and in addition thereto the owner or owners shall pay to the state and parishes a sum equivalent to the difference between the taxes actually paid and the taxes which would have been levied upon it had it not been assessed under the provisions of this section, plus interest at 6 per cent from the dates upon which such taxes would have become due. Nothing in this Act shall be construed as giving the Department of Conservation jurisdiction over lands of any resident farmer without written contract."

One error which must be rectified in forest tax legislation is the tendency to centralize the administration of laws taxing forest property, as a means of protecting owners against local assessors. Any such measure, if needed, should cover *all* property assessed under the general property tax. If a law is to be generally adopted, the same local machinery under which the general property tax is administered must suffice to administer the forest property tax. The local assessors should fix the valuation according to the provisions of the statute, at not more than the average value

of similar lands in the town or district. The collection of the products tax on timber should be accomplished through local machinery, probably by submitting returns as for other taxable property, with provisions for checking by the assessors which may be worked out to fit conditions. The assessors should also determine, as for other property, the value of the stumpage on which the tax is paid. Any special privileges must be such as can be incorporated in the law itself, and not secured by imposing duties upon the state forester which he has no time to attend to.

In certain states, such as Pennsylvania, the method of granting privileges based on special classification includes the provision for the state to pay the taxes on lands so listed. This has been proposed for New York. This plan of having the state pay taxes to the towns might be justified on the basis of the public benefits expected, but under conditions so arduous that private cooperation cannot be secured by proper reform of methods of taxing timber, coupled with the concession of low fixed land-values, and when the property owners will not stand any private taxation, it is not a case for subsidy but for state ownership.

It would seem that general legislation and legislation based on special classification are not mutually exclusive, but may be worked out to supplement each other. The universal failure of special classification to date as an effective economic measure is the strongest argument for attempting either the substitution of the general principle applicable to all forest property, or a great simplification in procedure for special laws, or both. Meanwhile the need for such laws is increasing and the subject is sure to receive the attention of lawmakers to a greater and greater extent in the near future.

**CHAIRMAN FAIRCHILD:** Mr. Holcomb has a few notices to give before we proceed with discussion.

**SECRETARY HOLCOMB:** I should like to say that there has been a request that the program be changed slightly, so that you may expect that the matter of public utility taxation which was set down for Friday morning will be placed either Thursday afternoon or Thursday evening.

**CHAIRMAN FAIRCHILD:** The hour is getting late, I know, but we still have an opportunity of hearing some further discussion of this subject of forestry taxation, and I trust those who are interested enough to remain with us a little longer will do so and that they will find themselves repaid.

I take pleasure now in calling on J. H. Foster, state forester of this great forest state in which we have the honor to meet.

**J. H. FOSTER,** state forester of New Hampshire: Mr. Chairman

and gentlemen: I was very much impressed with the statement made by the tax commissioner from Connecticut to the effect that he believed that people got more value for the dollar they paid in taxes than they realized. I want to take just one moment to say that I think this is true. I wonder how many people would be willing to go back to the privations of fifty years ago for the sake of having the low tax values that they had at that time. I don't believe very many people would. We should not have our good roads, and we should not have the protection to the forests which we have today. Only a few days ago we had a fire right over the range of mountains here, in the town of Lincoln. If this fire had burned years ago in a period as dry as now, it would have burned half of the township property, because there would have been no machinery for putting it out. This fire started in the middle of one of the most serious fire hazard areas in the State of New Hampshire, and it only burned two hundred acres, due to the fact that we spent money, raised through taxation, to build and maintain lookout stations and organized fire protection systems, for the purpose of protecting that land. Now, I am not going to continue on that subject, except to say that I do feel that a great deal of the money that we raise in the state for taxes today is so well spent that people would not be willing to do without its benefits. We ought to spend a larger percentage of money raised in protecting and maintaining the forests in our wild land section than we are able to do in New Hampshire. In the State of Maine they have a special tax for forest protection purposes. In New Hampshire we have a special tax for school purposes, but we have no special taxes for forest purposes, and I think it is fully as warranted that we should tax our wild lands for protection purposes as to tax our wild lands for school purposes, and that it is fair that we should raise money, and more money than we can possibly raise through direct taxation, for the purpose of being able to put more money back into these vast forest areas which are so greatly in need of protection and care if we are going to continue to have our forests in the future.

Forest taxation is a serious problem, and it is one which we have thought of a good deal in New Hampshire. We have made attempts to amend the constitution so that we might specially classify forests for taxation purposes, and they have always failed, and many of us here have lost heart because of the inability of our people to interest the population of the state on this great vital question. Whether or not this question will rise again in a few years, it is difficult to say, but certainly the problem is just as acute as it can be so far as our growing timber is concerned. We ask no favor for mature timber-lands. We think they should be taxed at their full value. We are not interested in holding vast

areas of valuable merchantable timber for the future; we want to see our young growing forests become large enough to become merchantable; and if taxation impedes the development of our growing forests then we are certainly interested in taxation. We cannot afford to tax our growing timber in the way we would mature timber or other kinds of tangible property. If anybody doubts this statement, he should investigate fully enough to be thoroughly convinced. I believe the rapid changes in valuation, increasing the value on certain areas of timber, varying greatly from one year to another, have a serious consequence in encouraging the cutting off of timber. I believe the values should be increased very slowly and gradually, until the timber reaches the point when it is merchantable. Rapid change in valuation is certainly serious to the owner as well as to the town, because whether he is justified or not the owner will not continue to hold timber year after year and pay a high valuation, when he is not receiving any returns from the crops being taxed. He may be fully able financially to pay on a high valuation, but his thought is at once to cut off the timber. The town will lose the tax if he cuts it off; no question about it. The justification for high valuations is to get more money from taxes. If we cannot get more money out of it in taxes over a period of years because the first or second year after the timber is cut off, the town loses because the land must then be taxed as cut-over land. I can show figures to compare what taxes the town would get over a period of ten years if they kept a fairly low valuation on their timber lands during the entire ten years, and what the town would get if the valuations were high for a few years and were afterwards reduced to a minimum because the timber was cut. An examination shows that the town would get far more money at the end of ten years through taxation at a lower value than at a higher value. We are confronted with the constitutional objection to changing the system of taxing forests which we know would benefit our growing forest lands. That is why we have tried through the constitutional convention to make it possible to classify and levy a different kind of tax on growing timber land. What we need is to bring home the facts, so that the farmers and the timber-land owners will understand that some method of taxing the forests as by a product tax, and taxing the land as a land tax should be worked out. If we have a constitutional convention again we may be able to have something passed which will be helpful. The farmers are against the idea of a special classification for woodlands because they think the timber-land owners are the ones who are going to benefit by a change of the constitution. The lumber men, on the other hand, are not very much interested in changing the constitution, and we have never succeeded in getting anywhere on the question of a

constitutional amendment, but we need to have it amended so that we can classify forests, and have a products tax, or else we need to legalize a lower valuation, or a lower tax rate on growing timber land. If we can make those benefits applicable to growing timber land, I feel sure that it will mean a great deal to us who are interested in promoting forest growth for the future.

CHAIRMAN FAIRCHILD: I am sorry to have to report that Mr. Clifford R. Pettis, and Mr. H. O. Cook are not able to be with us. Mr. Pettis has sent some remarks in writing which will appear in the record. We will now listen to Philip W. Ayres, Forester, Society for Protection of New Hampshire Forests.

PHILIP W. AYRES of New Hampshire: Having been a forester in New Hampshire for twenty years, I am delighted to see you here from various states, and having been a student some years ago under Dr. Ely, it would be natural for me to be interested in forest taxation.

Coming to these mountains you look about you and see seven hundred square miles of forest in the White Mountains that has been acquired by the United States. In our state we have some twenty thousand acres, perhaps a little more, that have been acquired by the state government. As a means of solving our various forest problems, including taxation, we have arrived at the same decision as the states of New York, Pennsylvania, Michigan, and some others, and which most of the European nations have adopted, namely; that the simplest way out of the problem is public ownership. That certainly solves the problem of taxation. In lieu of taxes on these seven hundred square miles in the towns all about us—Bethlehem, Franconia and all the other towns—the United States pays to the towns twenty-five per cent of the gross sales from the forest. Last year that brought back to our towns upwards of six thousand dollars. Please bear in mind that the government has expended about two million dollars in the lands that you see immediately about you, and that in the short space of ten years since the bill was passed and signed by President Taft in 1911, these acres have become not only self-supporting, but a source of revenue to the government.

This payment in lieu of taxes—twenty-five per cent of gross sales—turned over in the year 1920 through the state government at Concord amounted to much more than the towns would have obtained from those lands by taxation had they remained in private ownership, so that the towns were satisfied to receive only two-thirds of the federal payment, and one thousand dollars went into the school fund and one thousand into the road fund of the state. If anybody feels that public ownership does not solve the problem of local taxes in the towns, let him look to the state of New Hamp-

shire, and let him see that getting a percentage on the gross sales solves that problem.

The government has selected a very limited area in New Hampshire in which to purchase, and the state not being rich has been able to buy only a few acres on its own account. We have a total population of only four hundred and forty thousand and no large cities. We have with us, therefore, over the great portion of the state, the problem of taxing our forests. As Mr. Foster has just told you, we have tried in the constitutional convention to make a change and have been unable to do so, because the farmers have come to feel that any change is to their disadvantage, and that they have had changes enough. Until the problem of forest taxation in its general features is understood by the farmers of this, and I believe also of other states, I do not believe that the problem of forest taxation can be adequately solved. It seems to me the great need is one of education of our common people—of our plain intelligent New England farmers—on the fundamental principles of taxation. For the most part, no systematic effort has yet been made in that direction. I commend to the officers of this great national organization that in this and in other states some systematic effort for education of the people in taxation should be undertaken. I feel that the greatest possible benefit comes from the education of advanced students in the university, and great credit is due to the professors in our universities—Professors Bullock, Fairchild, and others; but that education is to a limited few. Until we can get these principles widespread we shall not meet our problem.

Having failed in New Hampshire in amending the constitution, we are naturally thrown back upon the matter of state ownership. I believe that some form of state control of cut-over land is essential, and I believe that Mr. Landell, head of our local lumbermen's association, in the pine lands of southern New Hampshire, has hit the nail on the head when he says the state should say to the lumberman who has cut his timber, "We will help you to reforest, and if you will not permit this, we will buy the land from you at a fixed and legal rate, and take it over for the state." State ownership must come in some goodly measure in our abandoned farm areas and in our wild land areas, and I feel that this can be done through the issue of state bonds that in time will pay for themselves, with interest, as the forest grows to maturity. If we can make the national forests profitable within ten years, or even a shorter period, then I believe the state forests can be made profitable within a period of years. During the interval from the time of the issue of bonds until the forest begins to yield revenue—a comparatively short period—the state can afford to take over the financing of the few towns that cannot carry the temporary loss in taxes.

CHAIRMAN FAIRCHILD: The United States Forest Service is always interested in this subject and I am glad to call upon Mr. Louis S. Murphy of the federal forest service.

LOUIS S. MURPHY: Gentlemen, I should like to take the opportunity at the outset to impress upon this conference the timeliness of this discussion of forest taxation, probably a great deal more timely than most of you anticipate, and similarly a great deal more important. The war, as you know, enlightened us on many subjects, and among them, upon the extent to which our natural resources and particularly our forests were being depleted. Especially it revealed the extent to which much of the forest lands which had been cut over had actually been devastated. An appreciation of those conditions has led to a movement to formulate a national program of forestry, outlining the necessary corrective action. That program is still to some extent in a state of flux. There are, nevertheless, certain outstanding features of it on which I think there is more or less general agreement. In view of the fact that about eighty per cent of the timberland of the country is owned by private individuals, the program has for its basic foundation some sort of public control of privately owned forest lands. Mr. Ayres has referred to state ownership, and that has a place in the national program of forestry of which I speak. It is absolutely out of the question, though, for either the states or the federal government to purchase enough land, or rather to get sufficient funds promptly enough to make it possible to purchase the land needed if we are to forestall the certain disaster that we are now facing. We must look to the timberland owner to do his part and with certainty, and so the question of public control is uppermost in the program under consideration.

The point I wish to make here is just this; that if the public can exact certain conditions from the timberland owner, then the public itself must be prepared to recognize that it has reciprocal obligations to the timberland owner to fulfil. Among such obligations are adequate public provision for fire protection and just taxation. I am happy to say that most of the states and the federal government are well on the road toward providing adequate fire protection for not only their own lands but also for privately owned lands. We are not in such a good position with reference to forest taxation.

Under the leadership of such men as Professor Fairchild, Professor Bullock and others—members of your association and outside—a definite advance has been made to the point of getting quite general acceptance of the yield tax or products tax as an adequate and proper means of taxing forest properties. We still need to go one step further and devise some more adequate means of putting this yield tax in operation. It has been enacted into

law by seven states but always on an optional basis and almost always with a string tied to it, binding the timberland owner who availed himself of it to practice the form of forestry prescribed by some state officer.

Up to the present time such legislation has not accomplished the result that it was hoped, and the reasons are more or less obvious. I need hardly take the time here to point them out. I should, however, like to draw a comparison between the way in which this needed reform in the taxation of forests has been approached and what seems to me the more adequate way in which the similar reform in the taxation of intangible property has been handled. In the case of the intangible property tax there was no beating about the bush and advocating a special tax reduction to the property owner who agreed, in advance, to be honest and list his intangible personal property. It was frankly conceded by all that the general property tax rate, when applied to such property, was both unjust and against good public policy, in that it failed to reach more than a fraction of such property and yielded an altogether inconsiderable revenue. Accordingly, wherever a change in the manner of taxing intangible property has been made it has been made applicable to that class of property by whomsoever owned and without regard to such owner's attitude toward his social obligations.

That clearly is the only adequate way to approach this forest tax problem, and I am happy to say that a growing number are coming to see it. On the other hand, however, it is doubtful if any two of that number would be found in agreement as to a suitable method by which it might be effected.

You have just had the benefit of hearing Professor Chapman discuss the subject from this angle. While adhering to the principle of the yield tax as he has done, I have developed a somewhat different method of applying it, which I should like to take this opportunity to lay before you. Professor Chapman has already pointed out the difficulties to be met in making the yield tax universally applicable. Probably the most serious of these difficulties is the one of providing local communities with a reasonable continuous income during the period when no yield tax is being realized. To attempt to remove that difficulty has seemed futile. Such purpose apparently is wholly irreconcilable with one of the chief objectives of the yield tax itself, namely, to defer tax payments on such property until the timber is cut, thus safeguarding it against the constantly accumulating burden of compound interest, resulting from the payment of annual taxes over a period of years in which no substantial income is realized from the forest property being taxed.

The plan, I am here proposing, centers around the means to be



used to reconcile these apparently diametrically opposing purposes. You are, all of you, no doubt, familiar with the United States treasury interest bearing certificates of indebtedness, having maturity dates falling on the quarterly payment dates for income and excess profits tax. Large tax-paying institutions—industrial corporations and banks and the like—and individuals, find the purchase of these certificates a convenient means of subsequently paying off their tax indebtedness. A similar certificate plan, modified, of course, to meet the particular exigencies of the situation, introduced into the forest tax procedure of the states should prove equally advantageous.

Under such a certificate of indebtedness plan the forest and other property would continue to be assessed and levied upon as at present, with only slight modifications. Where the state and local bodies made independent assessments, which might be at variance one with the other, such assessments would be harmonized. Also where the land and the forest tree growth thereon was assessed in one lump sum, such land and tree growth, whether mature timber or young stuff, would be assessed as separate entities. Furthermore, when it came to paying the taxes, an interest bearing certificate of indebtedness would be substituted for the usual tax receipt. The face value of such certificate would be the amount of tax due on the assessed value of the tree growth alone. These increment tax payments thus become an advance increment of the yield tax finally due and payable at the time any part or all of the tree growth is cut. At such time the necessary value of certificates of indebtedness would be surrendered in payment of the tax.

From their very nature and purpose it is obvious that the purchase of additional certificates would cease whenever the accrued value of those being held was equivalent to the yield tax currently indicated as being due. Assessed values may be conveniently used for this purpose. Such assessed value will, of course, rise with each new assessment in the case of a forest still growing vigorously. Purchase of additional certificates would then automatically be resumed. The increase in assessed value from one assessment to the next would become less and less, due to the slackening rate of growth as the forest approached maturity, until finally it would be completely offset by the interest accruing on the certificates. When that time arrived the certificates would automatically mature and the interest thereon cease. At that same time the timber value, along with the land value, would annually become subject to the general property tax unless and until the owner should elect to cut a sufficient amount of his timber to restore a proper ratio between his tax certificate holdings and the assessed value of his remaining forest growing stock.

The true yield tax, as finally assessed and collected, would be based, not upon the assessed value of the whole forest, but upon the actual market value of that portion of it that was actually cut. This actual value would in most cases be in excess of the assessed value. It would consequently take up a larger value of certificates than the assessed value had indicated as necessary to satisfy the tax. If the forest on the entire tract came to maturity at one time and was all cut off in one operation, and particularly if such forest had been under-assessed, the owner's certificate holdings would be insufficient to satisfy the yield tax due. The balance would then be payable in cash.

I should like to mention one farther point in closing. The view is coming to be held by many that the soil productive value should be the only taxable value levied upon where forest production is concerned. Since I, myself, am favorably inclined to such a plan I have kept its needs in mind in formulating the method just outlined, and am confident that the two can be readily harmonized.

CHAIRMAN FAIRCHILD: Just a quarter of an hour left, and the subject will now be thrown open for general discussion. The chair will be insistent in the enforcement of the five-minute rule, and if some of you are inclined to make your remarks even less than five minutes, you will give opportunity to others who wish to speak.

J. E. SAINT of New Mexico: The question that I wanted to bring up was the taxation of timber cut from forest reserves. In New Mexico we have nine million acres of government forest reserves. The government sells the timber at two and one-half dollars per thousand. There are certain sums, a certain percentage of that two dollars and fifty cents the government turns over to the school fund, and a certain percent to the road fund. That is a donation from the government to the state. The question that I wanted to ask the gentleman who first opened the discussion of forestry assessment was how, if possible, could we assess the buyer of this stumpage of the government on an output tax—whether it was possible. We get nothing. Mr. Link tells me Colorado gets nothing from the government forest reserves where the government is selling stumpage to the manufacturer. We have vast areas of forests in New Mexico under private ownership. We assess timber land that is in private ownership; we assess the stumpage. If it is remote from the railroad, we assess it at forty cents a thousand, and the land besides, as grazing land. Where it is nearer the transportation, we assess it at fifty and fifty-five cents per thousand, standing timber; operating timber we assess at two dollars. Now, I have in mind our biggest manufacturer of lumber, the McKinley Lumber Company, successor to the

Old American; they have about a billion feet. We assess about three hundred and seventy-five million feet at two dollars, because it is within reach of their transportation system. They have over five hundred million feet over the continental divide that is inaccessible, without building a new transportation system; that we assess at fifty cents a thousand, because none of it will come into the market within probably ten years. We have assessed timber at from forty cents to two dollars, according to its location to transportation, and whether it is operating timber or not. The point I wanted to get at was, how our state could get any revenue from the purchaser of this government timber on forest reserves. On that he might give us some points that would enable us to catch the fellow who had bought.

J. H. FOSTER: In the first place, the state of New Mexico gets thirty-five per cent of the gross income from the sale of this timber, plus the ten or eleven per cent in addition to that turned over to the school fund, so that they get about half of that which the government receives, the government in the meantime spending money for fire protection. If the state actually owned it and operated it they might not get as much as that. Secondly, I presume it is true that the state taxes the very large areas of this McKinley Lumber Company, and the property of its dependents, and in that way derives a large revenue from the industry; and in the third place, the lands which are being cut over by this system are going to continue to produce timber forever, and thirty-five to fifty per cent of this income will go to the state in taxes, while the lands which have been cut over by the McKinley Lumber Company—and I have inspected them—have been burned—productive power completely destroyed—and the state will never get any revenue from any more timber cut from those lands, which points the difference between a system of taxing the income and permitting an owner to grow timber and attempting to extract taxes entirely from the products tax. Now, I am not prepared to say just how the taxes which the government pays in the form of products-tax can be extracted again in the form of a property tax from the same timber. That I cannot answer.

MR. SAINT of New Mexico: That is what I was trying to get at, whether it was possible, if the manufacturer makes a contract for ten or twenty million feet of stumpage, and the forester selects that stumpage—reserving, of course, all young timber. Now, the buyer of that, the man that goes into the market, who competes with the lumber business, does not pay any tax at all on the products. Of course, I am fully aware that the government is donating a great portion of its returns from these forest reserves, to state, school and road funds, but what I am after is the man that has

bought this stumpage and gone into competition with the lumber business in private ownership or on property that is owned in fee. You see that there is a vast difference between the man who buys his stumpage by the thousand and pays no taxes at all, and the man who owns it in fee and pays taxes on his stumpage. We get nothing from the government except what they give us. I mean to say, we do not assess government lands; but it seems to me that the man who buys his stumpage of the government has a vast advantage over the man that owns his timber and land in fee. The point I want to know is, whether or not there was any system of taxation whereby we may reach the man who buys of the government, who goes on the market without paying tax to anybody. His lumber is not assessed; his output escapes taxation, while the man who owns his land pays taxes all the time. The only thing we get in New Mexico in the way of taxes on a manufacturer who is buying his standing timber of the government, is on his machinery.

PHILIP W. AYRES: May I ask a question of the gentleman? Whether in New Mexico the man who buys stumpage from the government does not have to submit to certain regulations that are an expense to him, with regard to clearing up slashings, as the government requires, and if he may not have to have a higher price for stumpage, because he gets it from the government, and thereby pays in part the tax that is not paid to the state government, but which goes to the federal government and thereby back to the state. That is, because of the additional burden put upon him because of government regulations; is he not contributing indirectly to the revenue of the state?

LOUIS S. MURPHY: It seems to me Mr. Ayres has hit the point. The timber-land owner is not only put to a considerable degree of expense on account of government regulations, but he has to pay the government a higher price for his timber. He buys timber land from the ordinary timber-land owner, who usually does not buy on scale; they guess how much is on the land and he pays a lump sum. A good many times he finds it less than it is worth. They do it in this country and do it in the West. The other fellow pays for every cent of it, and the amount he pays goes in a measure to the state. I do not think there is any undue favoritism in the way of business competition.

MR. SAINT: The point that I raise is still unanswered. As to the man who is operating on government land, it is true that the government turns back a part of what it receives for that, but he buys selected timber, which is the reason he pays a higher price. He buys nothing that is not good timber, because the forester

selects it for him, selects the trees, and he gets it. The man who buys a vast area of timber land, cuts everything, sweeps it off, and of course probably twenty per cent of it never goes to the mill. I have seen through the mountains of New Hampshire lots of discarded logs left on the ground to rot, but the man who buys the timber, he is the fellow that pays no taxes at all, not a cent.

C. P. LINK: Just qualifying the statement on Colorado; our laws for the assessment of capital invested in merchandise and manufactures are sufficient, as they are, to average up the value of the timber or lumber. I said to Mr. Sainte, which is true, that we have practically no tax. Unfortunately in Colorado our timber experience is very bad, very much worse than with the virgin forests of New Mexico. But the history of these men of whom Mr. Sainte speaks, in Colorado, is exceedingly bad. The fact is, I think, eight out of ten sawmill operators in Colorado have failed financially. They have been unable to make any money. But, I think, Mr. Sainte, that the main questions that are involved we can solve through our local legislature, by ample laws, and I wish to say for New Mexico that Mr. Sainte has led a splendid fight for modern taxation down there. I think these questions can be solved locally.

JOHN EDGERTON of Montana: The secretary handed me a paper from Mr. Pettis, Superintendent of State Forests, and it might be well to put one or two of the points Mr. Pettis makes before this meeting before we close. With the indulgence of the conference I should like to refer to it.

CHAIRMAN FAIRCHILD: We would be very glad to have you.

## FOREST TAXATION IN NEW YORK

C. R. PETTIS

Superintendent of State Forests

This question has been considered at various meetings of the State Forestry Association, land owners, etc., and there have been only four concrete propositions as far as legislation is concerned. They are as follows:

1. Chapter 444, Laws 1912, which provided that lands unsuited for agriculture may be planted or underplanted in areas of five acres and upwards under an agreement with the conservation commission, provided such lands are assessed at not more than \$5 per acre or similar lands in the same tax district are not assessed at a higher rate. There is no reference as to their location relative to

cities or villages. If the owner desires to place his land under this classification he applies to the commission to have the lands classified and makes a written agreement to reforest within one year after the date of the agreement. When the land is reforested in accordance with the agreement, he files proof of planting with the commission. It is further required that the land shall be used strictly for forestry purposes. When the lands are so classified, the property is assessed for a period of thirty-five years at a value not exceeding the assessed value of the land at the time of planting. All tree growth thereon is exempt from taxation for a period of thirty-five years. After thirty-five years there is no control over the assessment either of the land or timber. It is provided that the land must be used exclusively for forestry purposes; grazing must be prohibited; the owner can cut timber when he desires; and there is no cutting tax when the crop is harvested.

2. Chapter 249, Laws 1912 applies to any land planted or underplanted since April 10, 1909 of not less than one nor more than 100 acres. There is no previous agreement required and no limitation as to the value of the land which may be included. However, the property must be situated not less than twenty miles from a city of the first class, ten miles from a city of the second class, five miles from a city of the third class and one mile from an incorporated village. (This is done to exclude lands which are held on a speculative basis for real estate purposes.) Neither an application nor an agreement is necessary, provided the land is reforested since April 10, 1909 and proof of planting is filed with the conservation commission and with the local assessors, and provided further the land is used for forestry purposes. The benefits derived are total exemption of assessment for a period of thirty-five years on any land planted with at least 800 trees per acre, or, if underplanted with 300 trees per acre, the assessment is at fifty per cent of the value of the land, exclusive of the timber. All tree growth is exempt from assessment for thirty-five years or more. The growth is exempt after thirty-five years if the forest is not cut. The land must be used exclusively for forestry purposes; grazing must be prohibited; and there are no restrictions as to the manner of cutting after thirty-five years. There is, however, a cutting tax of five per cent upon the estimated stumpage value of the material removed.

3. Chapter 363, Laws 1912. — This applies to woodlots not exceeding fifty acres with either natural or planted growth, provided they are placed under forest management by agreement. There is no limit as to the assessed valuation, but there are some restrictions, i. e. the lot must not be situated within twenty miles of a city of the first class, ten miles of a city of the second class, five miles of a city of the third class or one mile of an incorporated

village. The owner applies to the conservation commission to have the land classified. The commission prepares a plan of forest management, which may include planting, if necessary. The land must be continued to be used as a woodlot. The law provides that the assessment shall be on the land only, but in no case assessed higher than \$10 per acre. All tree growth is exempt from assessment during the period of agreement, and these benefits continue as long as the plan is carried out. The area must be used exclusively for the purposes of woodlot, in accordance with the plan; grazing is prohibited and all cutting must be done in accordance with the agreement. There is a tax of five per cent, based upon the actual value of the material removed which is determined by measurement.

A period of nearly ten years has given some opportunity to observe the working of these laws. As a result ninety-eight acres have been entered under the first plan, which is cumbersome and entails so much red tape that only two parcels have been so classified. There is so much trouble involved that persons after looking into the matter give it up.

Under the second provision 518 acres have been entered. This is the best of the three laws, but is limited to tracts of not more than 100 acres.

Under the third provision 663 acres have been entered, which is limited to areas of fifty acres, but under an opinion of the Attorney General a common owner may enter more than one fifty-acre parcel, provided they are in the same tax district and not adjacent.

The net result to the owner in most instances has been negative. After all of the red tape has been complied with and the owner asks for a reduction in assessment, the assessors reply that his property is assessed at far less than its actual value, and, therefore, he has no complaint; furthermore, that denuded areas upon his farm have not been considered as of value by them in making up their figures as to what is a proper assessment for the property. The only way that this game can be carried on to get even with the assessors is for the land owner, the year before he wants to enter his land, to have the property which he intends to reforest assessed separately from any other lands which he owns. He can then make a complaint as to this particular parcel, but it does not prohibit the assessors from increasing the value on his improved lands, if they see fit.

The fourth concrete proposition is a bill which was drawn by various associations in this state. It provided for separate assessment of land and timber on forest property; that the land should continue to be assessed as of the value of the denuded land in that tax district, to the owner of the land upon which the owner

would pay taxes, and there would be included in a separate part of the assessment roll an assessment upon the value of the timber, which the owner would not pay, and such tax would be returned by the local collector as unpaid to the county treasurer when making his return and the county treasurer would make a similar return to the State Comptroller, who would credit these taxes up to the county and town in which the property is situated. The Comptroller would keep a record of such expenditure. The bill further provided for a graduated cutting tax, being a varying percentage during five-year periods, for any timber cut upon these lands so assessed, and such cutting tax would be collected and paid over to the State Comptroller in lieu of the taxes which he had admitted under the above plan. This bill has been in various sessions of the legislature, but has never become a law.

There is a disposition on the part of the state tax commission to obtain higher assessments generally throughout the state, and this applies to forest as well as other property.

During the past few years we have been acquiring several million dollars' worth of additional acres of land for State Forest Park purposes, and in this connection have examined into the assessed value of property which we are acquiring. As a rule old abandoned farms are assessed at about \$4 per acre; second growth land from \$2 to \$3 per acre; burned land at \$1 to \$2 per acre; land from which merchantable timber has been removed at \$3 to \$4 per acre; and some of our best forest property at \$10 per acre. This is the value upon which taxes are paid on these characters of forest property.

Conversation with a great many assessors through the country districts brings forth the fact that they appreciate that a forest is a long-time investment; that they are not in sympathy with a high rate of assessment upon forest property, which would compel the owner to cut the forest; that a moderate valuation is put upon the land, upon the basis that the income from the property is not annual but only periodic; that such property cannot stand a high rate of assessment; and that it is for the benefit of the community to have the assessment reasonable.

I am told that the courts have held that property must be assessed at its full valuation, and I think that this is the critical point in the forest taxation problem. Forest land should not be assessed each year according to the full appraised valuation of the property. Other property is not assessed in this way. I know in the City of Albany that houses in the more desirable part of the city are assessed at a higher rate than houses similar and equally good in other sections of the city; therefore, some houses pay a higher tax rate than others. The same is true of farm properties. The farms in the fine river valleys are considered by the assessors



as having a high productive or earning capacity and they are assessed accordingly, while farms with meagre soil and on the hillsides and remote from market are assessed upon a much lower comparative valuation, for the reason that they are less productive and that what products are produced do not have a value, because there is greater expense in marketing them. This same idea is taken into consideration in the purchase of property. Cut-over lands, when a forest thereon would be mature, would have a far higher stumpage value per thousand if the material were near the market; there would be the saving of transportation over marketing a similar forest crop distant from the market. This comparison could be carried out in very many ways. The point I want to reach is that forest lands should be treated and assessed from a productive standpoint. Some of our forest lands will produce twice the material per annum, on the average, during a rotation that other lands will, and the proper basis for the assessment of forest land is its productive value. For example, if we assume that an acre of land of a particular type would produce 200 feet of lumber per acre per year, on the average, during a forty-year rotation and that this material would have a stumpage value of \$10 per thousand, then the annual return from this land would on the average be \$2. It could easily be calculated, allowing for discount during the growing period, what would be the average income from this land per acre per year, which we might assume to be \$1.50. Other lands might produce more, and therefore have a higher value, while still other lands might produce less and have a lesser value. I think that we must approach the question of forest taxation from this standpoint in arriving at the assessed valuation and that some further means must be made for a deferred payment of the taxes until there is an income from the property, or that the same must be done, having in mind financing the income for public purposes of the locality, during the interval of no income.

CHAIRMAN FAIRCHILD: The time has come to when we voted to adjourn. Mr. Holcomb tells me there is nothing on the program until a quarter past three, and if there is reason for it and the body wishes to remain in session, I presume we might do that.

MR. REYNOLDS: It seems to me in listening to this discussion, and from the experience we have had in the various states, that this problem of forest taxation is still in the elementary educational stage. This association has had one committee on forest taxation. As I understand, you have no standing committee at the present time, and it seems to me it would be of great value in this educational campaign if this body should appoint a standing committee on forest taxation. It would help greatly in bringing the

subject before the public. I hope that that can be done, but I am not a member of the association.

MR. LINK: If it is in order, I move you the appointment of a standing committee.

SECRETARY HOLCOMB: The procedure would be, if you want the association to continue the investigation, to request the association to appoint a committee.

MR. LINK: I move, Mr. Chairman, that the executive committee of the National Tax Association be requested to appoint a standing committee on forest taxation, the number of the committee to be fixed by the executive committee.

(Motion seconded.)

CHAIRMAN FAIRCHILD: You have heard the motion; is there discussion?

CHARLES J. BULLOCK: This is a matter to go before the resolutions committee. The sessions of the conference never pass motions of that sort. Shouldn't this go in the form of a recommendation and be referred to the resolutions committee? I believe that the recommendations of the conference have always gone to the committee on resolutions. The committee on resolutions is intended to pass on all questions involving questions of opinion.

CHAIRMAN FAIRCHILD: Strictly, I suppose, this is not an expression of opinion, but a suggestion for action to be taken by the association. What do you think about that?

SECRETARY HOLCOMB: I assumed that it was rather an indication that a committee is desired. Professor Bullock is correct in saying that it should come through the resolutions committee of this conference. Probably it would be as well to say at this session that we suggest, or we urge, or you might put it in the form of a resolution, and then it can go to the committee on resolutions.

MR. BULLOCK: The purpose of the resolutions committee is to give notice and opportunity for discussion of these things. I think no session has done anything of the sort. It may establish a new precedent, if it has not been done. It is the very purpose of the resolutions committee to have these things referred to it for due consideration so everybody has notice that these things will come up.

MR. LINK: It is just a matter of getting right in detail, as I take it. Let me inquire, if I understand our rules, if the resolution is offered at this time that it must be read.

SECRETARY HOLCOMB: Read here, and then referred immediately without debate.

MR. LINK: May we not have this now as a resolution? We will change this then, putting it in the form of a resolution, and may it be considered that it has been read.

CHAIRMAN FAIRCHILD: So ruled. The Chair does not understand there would be serious opposition to this motion and will rule that the proper procedure is ordinarily one of referring it in the form of a resolution to the resolutions committee.

Is there anything further to come before us; is there any further discussion?

A motion to adjourn is in order.

[Adjournment of Session.]

### THIRD SESSION

TUESDAY EVENING, SEPTEMBER 13, 1921

CHAIRMAN BLISS: The meeting will please come to order; the secretary has one or two announcements to make.

SECRETARY HOLCOMB: I just want to confirm what I suggested today, that the public utilities session will be advanced from the 10th session, Friday morning, to the 8th session, Thursday afternoon, taking the place of the session on federal taxes, dealing with tax exemptions. These will be shifted, and I wish that you would be good enough to advise those that you see who are not here.

The members may be interested in knowing about the attendance. There are thirty-seven states represented and four Canadian provinces. There are 230 registered, which is full up to the average attendance at these meetings, and it is very good for the situation in which we find ourselves this year. I should like to emphasize the suggestion made today that these empty chairs are rather distracting to a speaker, and if you would be good enough to move in, it would be very nice.

CHAIRMAN BLISS: The session this evening will be devoted to a discussion of the activities of a committee of the National Tax Association which was appointed to prepare a plan for a model system of state and local taxation. As you know, this committee has been active for several years, and they have done a very fine work. We have an exceptional opportunity to hear from them this evening. It is very seldom that the proprieties of the occasion so thoroughly coincide with my personal desires, and I take great pleasure in introducing Professor Bullock to preside over this session.

CHARLES J. BULLOCK, presiding.

CHAIRMAN BULLOCK: Mr. President and members of the association; ladies and gentlemen: Your committee submitted a tentative report outlining the principles on which it seemed to them a model system of state and local taxation should be conducted, at the meeting held in Chicago in June, 1919. At the conference last year, held at Salt Lake City, after a session devoted to the further consideration of that report, your committee was further

instructed to undertake to draft bills providing for a personal income tax and for a business income tax, such as had been proposed in its report. The committee was fortunate in securing for the purpose of drafting these bills the expert assistance of Mr. Henry H. Bond, formerly Deputy Income Tax Commissioner of Massachusetts, and also Mr. George Holmes of the New York Bar, author of a standard treatise upon federal taxation, with which perhaps many of you are acquainted; and these gentlemen—the bulk of the work, it is fair to say, falling upon Mr. Bond—went to work and prepared tentative bills.

Your committee met last December at Buckhill Falls, Pennsylvania, and spent there at the well-known inn, the entire working portion of a week, threshing out the details of those bills, and the results are before you this evening. The bills were printed in a first edition in December and sent to members of the association in time for use last winter, in cases where they were required. Then, a second and amended draft was prepared later in the year and has either been distributed or has been placed on the table. Copies are now, I think Mr. Holcomb said, on the table at the left of the door, as you go out. Any members of the conference who have not had copies of these bills and desire to secure them might well provide themselves with copies before we proceed further with the discussion.

[Brief recess.]

CHAIRMAN BULLOCK: The meeting will again come to order. I may then present the first speaker. We all appreciate very greatly, and no one more so than the committee, the services of Mr. Bond in preparing the drafts of these bills, and it is certainly appropriate that he should be the first speaker on the program this evening;—Mr. Bond.

HENRY H. BOND of Massachusetts: Mr. Chairman; ladies and gentlemen of the conference: At this time when the work of the committee is still incomplete, I hope you will realize that the purpose of this session is to get from everyone present the utmost possible help in the way of criticism and suggestion, so that ultimately these bills that have reached this form may receive such approval as some later conference may care to give, and perhaps some backing from the association, but at any rate so that the various defects—and I have no doubt there are many—may come to light and be corrected and that we may all feel perhaps a general satisfaction with the result, and may hope that it will receive the endorsement of the various states ultimately.

I touched on this subject at Salt Lake City last year, but I want to emphasize the guiding principles, as I understand them, that the

committee recognized. First of all, we must seek simplicity—the utmost possible simplicity—in drafting these acts; and secondly, we must seek as great uniformity as possible, uniformity between a proposed state income tax and the present federal income tax. Now, of course, it is not easy to make a model law conform to a federal system that is itself still in a state of flux, still undergoing change from year to year at the hands of Congress; but in the main the federal rules which guide the department in determining net income have been pretty definitely settled. There will be some changes during the present Congress, undoubtedly. The problems of determining gain or loss on sale or exchange of property will doubtless be further modified; the application of the net loss rule will perhaps become a permanent part of the federal income tax; and for the first time the pending federal bill recognizes the propriety of deducting reserves for doubtful accounts, something that we advocated in this draft that you have before you. But the rule should be, I submit, that the states should make their income taxes as nearly uniform with the federal as possible, for two reasons: first, the federal system is larger, more comprehensive, has been longer in the field; and, secondly, for the sake of the poor taxpayer, so that he may have, as far as possible, but one rule of interpretation to remember, on all of the many difficult and doubtful points. Simplicity, above all, should be sought, and in asking myself this morning whether we had really followed that rule in drafting this bill, I counted the parts of this act which really relate to the ordinary taxpayer, and I was gratified to find that if a taxpayer will read just about three pages of this act he will learn all that is required of him in the average case. The rest of the act deals with the particular problems of fiduciaries, partnerships, information at the source, and then all of the necessary administrative problems. The taxpayer does not have to learn the powers of the tax commission. He does need to know what constitutes his net income, and the rates at which it is to be taxed, and when he should make a return. The vital points are all contained in about three pages of this bill. I doubt if they could be condensed much more than that. I think that we have met that test of simplicity as far as it is possible in an income tax.

The problem of determining net income is not a simple one from an accounting standpoint. Two accountants would rarely agree as to the true net income of a corporation. There are so many points on which there may be an honest difference of opinion. Rules must be laid down; they must be comprehensive; and then the rest must be left to administrative discretion.

The committee has received two communications, which Mr. Holcomb has asked me to call your attention to, one from Mr. Frey, of the Guaranty Trust Company, criticizing certain pro-

visions of the act so far as they relate to trust companies, and the fiduciary provisions; and the other from Mr. Shaw, income tax director of Massachusetts, referring to several details that Mr. Holcomb asked me to sum up very briefly. Mr. Shaw, for instance, prefers very much that we should take either the last day of the income year as the test day, to decide whether New York or Massachusetts shall get the tax. One day must be chosen, the committee felt, and the domicile on that day should control on the question of which state should impose the tax. The committee took April 15th of the tax year—of the income year. Mr. Shaw would prefer the last day of the year or perhaps a six months' period such as the Massachusetts act now has. He also suggests that in the definitions the word "resident" should be defined by the words "person legally domiciled", so that there may be no question as to the meaning of that word "resident". He suggests also that the personal liability of a fiduciary should be clearly set forth in the act, so that the fiduciary should add his personal liability to the liability of the funds in the estate. He suggests advancing the age limit for dependents from eighteen years to twenty-one years, and would eliminate the provisions as to mental or physical disability of dependents, as he thinks that difficult to administer. He suggests also that as the act is drafted, and I am inclined to think he is right—we have said that whereas the marriage status on the last day of the year shall govern, if a man's wife dies during the year he shall nevertheless have the deduction which he would have been entitled to had she been living; Mr. Shaw suggests if a man is married again he might in that way get two deductions. In Massachusetts at one time we contemplated holding up probate accounts until the tax had been paid and the tax commissioner certified that he made no claim for taxes. That statute was later repealed before it was put into active operation. Mr. Shaw feels there is no necessity for such a provision and he advocates eliminating it from this bill. He thinks the personal liability of the fiduciary would be sufficient. Those are the principal points on which he comments. I should like, Mr. Chairman, if I may, and I hope that the discussion over the various features of this bill will become general, to save such time as may remain to me, to say perhaps a word in reply to some of the matters that may come up in the discussion. I thank you.

CHAIRMAN BULLOCK: The chairman intended to allow Mr. Bond, inasmuch as he had been counsel to the committee, to overrun his time, but he has set us an excellent example in not doing so. The chair also intended and intends to enforce strictly the rule of the conference that speakers shall be limited to a maximum time of ten minutes. We all know that maximum limitations in taxation matters may become minima, and that minimum limitations

frequently become maxima. We have in the state of Massachusetts a tax ruling in connection with our corporation tax of the olden days, that when the minimum tax due from a corporation exceeds the maximum, the corporation shall pay the minimum instead of the maximum. In view of these tendencies of maxima to become minima, and vice versa, I want to suggest that this maximum limitation does not mean that ten minutes shall be the minimum the speaker shall occupy. There may be many speakers who will wish to address the conference this evening, and before throwing the discussion open, I will ask whether Mr. Franklin Carter, Junior, of the Equitable Trust Company of New York City is present. Mr. Carter is the first speaker.

FRANKLIN CARTER of New York: The Chairman's remarks perhaps leave me a little bit confused as to whether I am the maximum or the minimum; but whenever I attempt to discuss anything which has to do with a personal income tax, I am always a little fearful lest I may be classed with the man who stood in the south station in Boston, watching a husky Irishman tap the wheels of the Merchants Limited, and who did not like the way in which it was done. The man was waiting for his suburban train, and he said to the Irishman: "What can you tell by hitting a wheel that way? Why don't you hit it? You don't half hit it!" The Irishman turned to him and said, "You go to the devil, and mind your own business." One of the trainmen overhearing him said, "Pat, do you know who that was? That is the vice-president of the road." "Be jabbers, I have lost my job; where is he; I will apologize to him." So Pat dropped his hammer, hurried up to the man and said, "Say, I was a bit hasty when I spoke to you. I want to apologize to you, but you looked just like one of them blame fools that is always butting into other people's business."

So far as is possible I have made an examination of this draft of the income tax law. The work which I have been engaged in for about four years has brought me into contact continually with the individual taxpayer and I feel as if I had a fair opportunity to get some knowledge of his complaints. The two principal points of criticism which I was prepared to make have already been made in the letters which were read tonight. It seems to me, though, that there is possibly another method of treating the question of a resident. When I told our secretary that it seemed to me the definition of "resident" was not clear, I told him that I had been taught when I was in preparatory school not to use a word to define itself. He said it was left intentionally that way because of the possibility of various interpretations. It seems to me that it might be definitely interpreted. As it is now, there are two, possibly three, ways of defining the resident: One who shall



have become a resident of the state after a given date, or at a given date, and one who shall have been a resident for a given period of time. Perhaps a third or fourth way—I say three or four because there are two ways which I mentioned which are practically one and the same—would be to tax the resident of the state, apportioning the tax for the time for which he had been in the state, and requiring him to give an affidavit as to the time when he became a resident, and if he came from another state, to supply an affidavit as to the time that he ceased residence in one state and went to the other. There were two cases which came up last year in New York state to my knowledge where a man became a resident of New York state during the latter part of December. He had practically no earnings and no income from the state of New York and yet technically under the requirements of the New York state law he was obliged to pay a tax on the full income which he had received for the whole year previous, and in the state from which he came there was no reciprocal credit, so that he got no advantage of any tax paid elsewhere. It seems that that is perhaps an unjust application, but I know that there are numberless instances where that occurs, and perhaps this could be obviated by apportioning the actual time of residence and taxing a man on the income which he earned within the state and upon the income which was accrued to him or payable to him upon demand after he became a resident of the state.

Another question which has seemed to me to be worthy of consideration, on which I presume I stand very much alone—a'though I know there are men engaged in the administration of trusts who feel as I do—is the question of fiduciary losses. When the Revenue Act of 1918 appeared, the working of the act seemed to indicate that the fiduciary was entit'ed to the same losses as the individual, and that if on selling securities or selling property he had a loss, he was entitled to deduct that from the net income. It still seems to me that there is that possible interpretation of the law. A ruling was obtained from Washington, which practically substantiated that theory, although it was couched in such terms that some of those who read it were not satisfied and went to Washington for a further explanation. This verbal explanation was made and seemed to confirm the written ruling which previously had been given, but the man who went to Washington to obtain this ruling found on his desk on his return a ruling in writing that recalled and completely upset the previous ruling. The result was that a great many people, relying on the first ruling, which was published in the corporation trust company service, sold property at a loss and were unab'le to deduct that loss in rendering returns for their trusts. The present attitude seems to be that there should be no loss—that is, so far as the government

officials are concerned—that there should be no loss taken by the fiduciary, because the loss cannot be properly applied to income which is paid over to the beneficiary. As I told Mr. Holcomb, there seems to me to be no way which presents itself—no constructive way—of meeting this thing, so that there could be an apportionment; but, there is a definite loss to the corpus of an estate; the beneficiary during his life tenancy loses the income from that loss, and the remaindermen also suffers a loss, and it seems to me that there could possibly be some way of apportionment worked out which, on the theory that losses are to be deducted from the net income, would permit of apportioning a loss so that the trust or the fiduciary may take advantage of it. Perhaps one reason why the question has not been raised or pressed more strongly is because of the fact that most of these trusts exist for those who have gone, and there seems to be nobody who has taken it upon himself to speak for them. The question of net loss, if applied—that is, the net loss provision embodied in Section 204 of the new bill, House Resolution 8245—might possibly take care of this if applied to the fiduciary and might permit, where a loss had been made in one year and a profit had been made in the corpus of the estate in the next year, the offsetting of the loss of the previous year against the profits of the succeeding year. The federal bill as proposed provides that net loss may extend over a period of two succeeding years. This seemed of sufficient importance to me to ask your consideration of it and to ask you, if possible, to work out some method of giving this relief. The question of gain or loss has been practically answered in advance; in other words, the Brewster case and the Goodrich case have reorganized matters so far as an interpretation of the existing provisions are concerned, and the present drafters of the bill will undoubtedly take care of those questions in framing up the new bill. Those points are practically the principal ones which have come to my attention, and I think that the others have been fully covered by the letters which have already been read. I thank you.

CHAIRMAN BULLOCK: The next speaker on the program is Professor Fred R. Fairchild of Yale University.

FRED R. FAIRCHILD: Mr. Chairman, ladies and gentlemen: The rather high-brow introduction with which our chairman has so tenderly introduced the unfortunate speakers of this evening may have been a bit confusing to Mr. Carter, but I think I get the gist of it. I am inclined to think that when he looked over the printed list of speakers and saw there the names of some of us who attend very nearly all of these conferences and have a way of talking whenever we get a chance, whether it is doing any good or not, he decided that we were like a small boy of my acquaintance whom

I came across one day weeping bitterly and efficiently. I asked him why he cried so, and he said, "My father won't let me go to the circus." "Well," I said, "Do you think crying will make him let you go to the circus?" "Well, no, I suppose not," he said, "but it ain't any trouble to holler."

What I have to say tonight is not by way of technical criticism or commendation of this bill. You have heard from some, and you will hear from others, who are much better qualified for that task than I am. I want to say, however, that I believe nobody appreciates better than I do the very valuable service which has been performed by this committee in drafting these bills.

Anybody who has had experience in drafting bills knows what a tremendously difficult and intricate task the framing of the simplest law turns out to be, and anybody who has had experience in drafting an income tax law will appreciate the tremendous service which this committee has rendered. In Connecticut this spring we have been wrestling with the income tax problem. For several weeks it was simply a question from day to day whether the legislature might not be led to pass a state income tax; and some of us had to be ready to help when the time came. In connection with that I have had occasion to make the most careful study and the very most helpful use of this draft of your committee. That, however, is not what I want to talk about.

The idea that is impressing itself upon me more and more about the personal income tax is that it ought to be strictly personal. The committee has not forgotten that, and I hope that every state which in the coming years may be induced to adopt an income tax will not forget it. The advantages of the income tax, as I see them, are two-fold. First, it is a direct tax; it comes home to every taxpayer as a direct contribution from him to the government. He pays it, he knows he pays it, he knows when he pays it and how much he pays. He knows that he is personally called upon to make a sacrifice; to make his contribution toward meeting the expenses of government. The advantage of that can, I think, not be exaggerated. The taxpayer who knows that government expenses mean a burden upon him; that the money which the government spends comes in part out of his own pocket, is the taxpayer who takes an interest in government expenditure. He is the one who realizes the advantage of economy in government administration. He is the one who feels the loss from waste and extravagance by the government; he is the one who does not cheer and applaud his representatives when public money is thrown about carelessly from the public treasury; and he is the one who may be expected to hold up the hands of those representatives who are inclined to urge and enforce economy. And in these days we need just as many of that sort of citizen as we can have. Too

many of us feel that anything that is gotten out of the public treasury is so much clear gain which costs nobody anything, or if it costs somebody it does not cost us anything. The wider we can spread the feeling that it is the taxpayers who have to pay, the stronger will be the inducement to practise economy and wisdom in the management of public affairs. The income tax does this, and it does this just to the extent that it is a direct personal tax, a tax whose burden is felt and whose burden cannot be shifted to somebody else.

In the second place, the income tax is the tax which I believe best enables the legislature to place the burdens of government upon the people according to their ability to pay. That point I do not think needs much discussion; I think it is generally understood and accepted that the modern notion of the proper distribution of the burden of taxation is that each should pay according to his ability, and that nothing so properly and accurately measures tax-paying ability as the receipt of income. The personal income tax carries out this idea. Just so far as we can extend its basis; just so far as we can increase the number of citizens who pay some share toward the expense of government through the income tax, just so far do we progress toward a more equitable distribution of the burden and that enlightened public sentiment which alone can make the management of our public finances careful, economical, wise, and efficient.

For that reason I feel disturbed at every suggestion that the minimum of exemption be increased for the federal or for state income taxes. It seems to me that the one principle by which to determine the minimum is that it should be the lowest figure which is capable of effective administration. It does not seem to me it is a question of justice; it does not seem to me that there is much use to talk about there being a certain minimum of subsistence which you cannot tax. As a matter of fact the administrative difficulties of collecting small taxes from a vast number of people will generally become prohibitive, I think, before we get below any theoretical minimum of subsistence. Let us have, then, the minimum just as low as we can and still make the collection worth while. The lower we get it the more we get these indirect and enormously important advantages of the direct personal income tax.

The federal income tax is not the subject before us tonight, but we have had experience with the federal tax, more ample and varied than we have yet had with state income taxes, and there is where we turn for the lessons of experience. I am reminded particularly of one instance in which I think the federal tax has failed to make the income tax personal. I refer to the combination of the individual income tax and the tax on corporations.

All of you, of course, know that the ten per cent tax on the net income of corporations is supposed to be in a way combined with the personal income tax. It is in lieu of the normal tax on individuals, with respect to their income from dividends from stock of corporations. This theory is completely wrong. Serious injustice is done to those citizens with small incomes obtained from dividends on corporation stock. If the dividends were first given to the taxpayer and then taxed according to what his rate should be, he would first have the one or two thousand dollar exemption which he now does not get. He would then have a normal rate of four per cent up to the first four thousand, and thereafter eight per cent, whereas now, regardless of his income, of the exemption, and of the low rate to which the spirit of the law entitles him, he pays a ten per cent tax, withheld by the corporation. I don't think we will get that thing right until we give up the corporation income tax as an income tax, turn over all dividends and interest on bonds to the individual stockholders and bondholders, and have them return them as personal income, thus securing the advantage of the exemption, the advantage of the low rate, and paying the normal rate and such surtax rates as their total incomes make proper. We are not likely to make that mistake in a state income tax, and yet there is a danger, and every state should keep in mind that we cannot combine corporation income taxes with personal income taxes without unfortunate results.

CHAIRMAN BULLOCK: Morris F. Frey of the Guaranty Trust Company was to be the next speaker, but he has been unable to come to the conference and has sent a letter. This letter has been referred to by Mr. Bond, therefore unless there is objection we will not have the letter read, but I will ask for authorization to have the letter inserted as a part of the records of the meeting. If there is no objection I should be glad to have it so considered.

[No response.]

CHAIRMAN BULLOCK: If not, we will assume that Mr. Frey's letter will be incorporated in our proceedings.

[The letter referred to is as follows: *Ed.*]

“GUARANTY TRUST COMPANY OF NEW YORK  
140 Broadway

NEW YORK, JULY 20, 1921.

MR. A. E. HOLCOMB,  
195 Broadway, N. Y.

*Dear Mr. Holcomb:*

In accordance with my conversation with you some time ago, I am taking the liberty of calling your attention to certain changes in the fiduciary provisions of the model personal income tax law.

The provisions of the proposed act I believe should be amended in two respects: first, the tax on income received by or through fiduciaries should be imposed in more definite terms, and second, the status of income received by or through a fiduciary for tax purposes should depend upon the residence of the decedent, the creator of the trust or the beneficiary entitled to the income, and not upon the residence of the fiduciary.

*First:* The provisions embodied in the model personal income tax law relating to fiduciaries present the same questions of uncertainty which were presented in our earlier federal income tax laws, and I believe that with the experience which we have had in our federal law and also in our New York State law, very definite provisions with respect to the taxation of income of estates and trusts can be formulated.

As you will recall, under our earlier federal laws, on account of the fact that the provisions of the law and regulations were so indefinite much confusion existed for a long time as to the taxable status of the income of an estate or trust, particularly with respect to the income of an estate or trust, which, under the terms of the will or deed of trust, was allowed to accumulate for future distribution. This confusion the department attempted to clear up through regulation, by the issuance of Treasury Decision 2231, on July 26, 1915, which provided specifically that the income of trust estates as any other income, was subject to income tax and that any part of the annual income of the trust estate not distributable was taxable to the estate or trust as an entity.

The courts have not upheld the Treasury Department in its interpretation of the 1913 law, and a comparatively recent decision of the United States Circuit Court of Appeals in the case of the *First Trust and Savings Bank v. Smietanka*, has declared the ruling of the Department under the 1913 law invalid.

The court, in announcing its decision in this case, stated that

"inasmuch as all persons and property within the jurisdiction of a sovereignty are subject to taxation, and since the property cannot speak and the persons have no direct voice in wording the tax laws, it is a fundamental duty of the lawgivers to make the scope of a tax law definite and its meaning clear; and therefore all doubts respecting scope and meaning are to be resolved in favor of the taxpayer."

In view of this decision and my experience in dealing with both the federal and New York state income tax laws, I am strongly of the opinion that the law should fix the taxability of income of trusts and estates in definite and certain terms. To this end I would suggest that the following be substituted for sections 201 and 401 of the model tax law:

"Sec. 201. (1) The tax imposed by this title shall apply to estates and trusts, which tax shall be levied, collected and paid annually upon and with respect to the income of estates or of any kind of property held in trust, including:

(a) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) Income held for future distribution under the terms of the will or trust;

(d) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals;

(e) Income collected by a guardian of an infant to be held or distributed as the court may direct; and

(f) Income of an estate which during the period of administration or settlement is properly paid or credited to any legatee, heir, or other beneficiary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereof. In cases under paragraphs 4 and 5 of subdivision one of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed, before the close of the taxable year for which the return is made.

(3) The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this title for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any state, territory, or any political subdivision thereof, or the District of Columbia, or any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) In cases under paragraphs (a), (b) and (c) of subdivision (1), of this section, the tax shall be imposed upon the estate or trust as an entity, and shall be paid by the fiduciary; *Provided*, That in determining the net income of the estate of any deceased person during the period of administration or settlement, under paragraph (a) of subdivision (1), there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases the estate or trust shall be allowed the same credits as are allowed to single persons under section 15 of this title.

(5) In cases under paragraphs (d), (e) and (f) of subdivision (1) of this section the tax shall not be imposed upon the estate or trust as an entity and paid by the fiduciary, but there shall be included in computing the net income of such beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon

the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed."

"Sec. 401. (1) That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make under oath a return for the individual, estate, or trust as follows:

(a) If acting for an individual whose entire income from whatever source derived is in his charge and the net income of such individual is one thousand dollars or over if single or if married and not living with husband or wife, or two thousand dollars or over if married and living with husband or wife;

(b) If acting (1) for an estate of a deceased person during the period of administration or settlement, whether or not the income of such estate during such period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary; (2) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests; or (3) for an estate or trust the income of which is held for future distribution under the terms of the will or trust: *Provided*, That the net income of such estate or trust is one thousand dollars or over;

(c) If acting (1) for an estate or trust the income of which is to be distributed to the beneficiaries periodically, or (2) as the guardian of an infant whose income is to be held or distributed as the court may direct: *Provided*, That any beneficiary of such estate or trust received or is entitled to a distributive share of the income of the estate or trust of one thousand dollars or more.

(2) The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions and credits allowed by this title. Under such regulations as the commissioner may prescribe, a return made by one of two or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall state under oath that he has sufficient knowledge of the affairs of the individual, estate, or trust for whom or which he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct. Fiduciaries required to make returns under this title shall be subject to all the provisions of this title which apply to individuals.

(3) The executor, administrator, or personal representative of a deceased person shall be required to file a return of the income of such deceased person for the period intervening between the beginning of the taxable year and the date of



death of the deceased, and such return shall include all income accrued to the date of death.

(4) The executor, administrator, or personal representative of a deceased person shall not be liable for tax on any return filed prior to the death of the decedent unless notice and demand of such tax is served upon such executor, administrator, or personal representative within one year after notice of the death of the deceased is given to the collector of internal revenue of the district in which the deceased was a resident at the time of his death."

*Second:* Under the model act as drafted (Section 201) the tax is imposed upon resident fiduciaries. As a fiduciary merely acts for or on behalf of a principal or beneficiary, I am of opinion that the test of the taxability of the income of an estate or trust should be the residence of the decedent, of the creator, or of the beneficiary, and not the residence of the fiduciary. In other words, if the decedent was a resident of the state within the meaning of Section 2 of the act, at the time of his death, any income accruing to the estate should be taxable. If, on the other hand, the decedent, at the time of his death, was a resident of some other state, even though there happened to be a resident fiduciary, the income would not be taxable unless distributable to resident beneficiaries. Likewise, if the creator of a trust was a resident of the state, the income from the trust retained by the trust, or the income of the trust distributable to residents of the state would be subject to tax. On the other hand, if the creator of the trust was not a resident of the state, only the income of the trust distributable to beneficiaries who are residents of the state would be taxable. The residence of the fiduciary should not, in any case, affect the taxability of the income.

The present provisions of the proposed law in this particular are unsound for two reasons:

(1) The act does not contemplate that the tax on the income of nonresident individuals, and trusts and estates should be taxed upon the same basis as resident individuals;

(2) Basing the tax upon the residence of the fiduciary tends to remove taxable property from the state of domicile of the creator of the trust and to permit him to choose a state which is the most advantageous from the standpoint of taxation. It also discourages business from outside of the state and from foreign countries, thus tending to reduce the general prosperity of the state without increasing the revenue.

The fallacy of making the residence of the fiduciary the basis of the tax was recognized in the drafting of the New York state income tax law, and I believe that a provision similar to the provision in the New York law should be included in the model tax law.

Yours very truly,

MORRIS F. FREY."

PROFESSOR BULLOCK, continuing:

The program called for a separation of the discussion of the personal income tax from that of the business income tax, but past experience has shown that the thing cannot be done and, with the approval of the secretary, I am privileged to disregard that arrangement of the program this evening, and we will pass on to the next of the announced speakers.

Unfortunately our good friend Dr. Adams has been detained at Washington and will therefore be unable to speak to us this evening, but we have with us the last of the announced speakers, Mr. Henry M. Powell of New York. I now call upon Mr. Powell to discuss the subject of the business income tax.

HENRY M. POWELL: Mr. Chairman, ladies and gentlemen: My friend Holcomb told me just before the conference that we were going to have a general discussion of the business income tax and that every speaker would be limited to about five minutes. Afterwards in a burst of confidence he said, "Well, we may consider this a set paper and perhaps will allow you a little more." I said, "Holcomb, I am perfectly satisfied to act as supernumerary in your show." Unfortunately, I don't know whether it was the change of water or the prohibition law, but I became somewhat indisposed, and my ideas on the subject are rather hazy. At the very last moment I heard that my friend and associate who was to talk on the business income tax, Dr. Adams, was not to be here, and I tried to jot my hazy ideas in concrete form on paper, so you will pardon me for this rather lengthy explanation. Whether it is five minutes or ten or even longer, I am sure my wife will be pleased because she said, "I don't know anything about taxation, I don't care anything about it. Should I come in here and listen to you?"

I want to say in the first place that I am not going to bother with the technicalities of the business tax or personal income tax, but I shall try to take up a few fundamental questions, some of which have already been discussed.

The plan of taxation provided by the Committee of the National Tax Association as a model system for local and state purposes, calls for a business income tax and a personal income tax. The personal income tax subjects residents to a graded or progressive tax of from one per cent to six per cent on income from all sources, with an exemption of \$2,000. The business income tax imposes a tax of two per cent on the net income of all persons, partnerships, or corporations, derived from business transacted within the state, with an exemption of \$1,000. Under this plan, if the income of an individual, resident of the state, is entirely derived from business in the state, he is taxed twice, once under the personal income tax law, and again under the business

income tax law. If he receives an income of \$7,000, all from business in the state, he will, if married, pay a tax of \$150 under the personal income tax law and he will also pay a tax of \$120 under the business income tax law. Whatever may be the merits of the model income tax theoretically, it results under this plan in a serious discrimination against residents who pay practically all the taxes. The New York plan of income taxation is far more equitable. It taxes residents only once on all income, whether derived from business or from other sources. Non-residents are taxed on income from property owned, and from business, professions or occupations carried on in the state.

The principle of taxing all business income in the same way, adopted in the model business income tax, is open to certain objections, when considered legally and administratively. A corporation receives a franchise from the state of its origin, enabling it to do business in the state, or, if a foreign corporation, receives a license to do business in the state. The courts of law have held that the right to do business in a corporate and organized capacity is a very valuable privilege that may be taxed in a different way than the right of an individual to exercise his occupation or employment in the state. Administratively, the corporation tax problem may be handled more easily if the corporation is taxed under a separate law, than when persons, estates and partnerships are taxed with corporations. A corporation's family history, so to speak, is a matter of public record, which may be found in the office of the secretary of state, or in the archives of the state tax commission. Its property is well known, definite in amount and proportion, consisting of capital stock and surplus, and its income payments to its stockholders are evidenced by public declaration of dividend. The legislatures of the different states have prescribed the forms of reports by which its financial condition may be ascertained. Corporations, therefore, being purely creatures of the law, endowed with certain valuable rights and privileges, differing in this respect, essentially from persons, should be treated differently in any scheme of taxation which does not include taxation *in rem.*, or a pure property tax, like a real estate tax.

Now what are the lessons that may be learned from the great commercial and manufacturing states that have adopted a business tax, whether that tax be imposed on corporations or on persons. The State of New York since 1917 has taxed business corporations on net income, and has been very successful in raising large amounts of taxes at a minimum expense. The tax collected from this source in 1917 was \$18,000,000; in 1918 over \$20,225,000; in 1919, \$37,250,000, and during the past year the tax on corporate business income was more than \$42,000,000. There were more than 80,000 business corporations that made returns in 1920

to the corporation tax bureau of the New York state tax commission. Only about 50,000 of these paid a tax on net income, the remainder returning no income and paying a minimum tax. The average corporation income tax paid in New York in 1920 was \$810, and the average net income about \$18,000. This was more than fifteen times the average tax paid by the individual resident of New York doing business in the state. The tax rate under the corporation income tax law in New York is now four and one-half per cent, while the personal income tax is graded from one to three per cent. More than two-thirds in number of personal income tax payers earn less than \$3,000 and are assessed at the rate of one per cent.

It costs the State of New York less than \$150,000, or about one-quarter of one per cent, to collect its corporation income tax of \$42,000,000 plus its general franchise taxes of \$15,000,000, and the administration of the corporation tax bureau works so smoothly that it seems to have found what Governor Miller refers to as the "painless method" of extracting taxes from corporate taxpayers. The forms of report in New York are simple and easily understood. If the corporation does all its business in the state, it is taxed on all its income as returned to the Treasury Department for federal tax purposes. If it does business in and out of the state, it pays a proportionate tax, based on the amount of tangible personal property plus real property in the state, plus accounts and notes receivable from merchandise sold and located in the state, compared with these items in and out of the state. Stocks in other corporations owned by the corporations are also taken into account in this segregation of assets. No schedules or balance sheets are required, unless called for by the tax commission. Connecticut has a tax on business corporations similar in many respects to the New York tax. Massachusetts has now adopted a like plan of taxation and super-imposed it on its corporate excess tax. Wisconsin's business tax is included in the general income tax, under which non-residents and corporations are taxed on business in the state. The Wisconsin plan does not include the taxation of income of non-residents from employments or occupations in the state.

Turning from the income tax on business corporations, to the tax on personal incomes in business, I am able to present some interesting figures taken from New York's experience in taxing non-residents engaged in business, or in exercising a profession or employment in the state. The New York personal income tax is a tax on business income, so far as it taxes the non-resident. Out of the total of \$37,189,272, collected from 618,595 taxpayers assessed for the year 1919, a little more than \$2,300,000 was collected from 36,512 non-residents. More than ninety per cent of

these non-resident taxpayers came from the State of New Jersey, about three per cent from Connecticut and less than one per cent each from Pennsylvania and Massachusetts. Less than five per cent of the non-resident taxpayers came from foreign countries and from states other than those mentioned. While I have no figures of the non-residents employed in the State of New York, I venture the assumption that there are perhaps 400,000 persons, residents of other states, employed or engaged in business in New York. Of this number, at least one-half have incomes of \$1,000 or more. If that is so, the number of returns for 1919 indicates that only one out of five non-residents made a return for that year. The total number of resident returns was over 700,000. All of this number did not pay a tax, but there were nearly 600,000 who did. The average tax collected from nonresidents engaged in business in the state was \$62.40. The average tax collected from resident taxpayers was only about \$50. More than two-thirds of the non-resident income in number and amount was derived from personal service or from the practice of a profession or occupation in the state. There was about the same proportion of resident taxpayers engaged in personal service or employment or professions in the state. More than forty per cent of the total number of taxpayers had incomes between \$1,000 and \$2,000; about twenty-five per cent of the total number had incomes between \$2,000 and \$3,000, so that about two-thirds in number of the taxpayers had incomes between \$1,000 and \$3,000.

The framers of a model business income tax may learn a useful lesson from the litigations that have arisen over the New York business income tax laws. Our corporation income tax law in New York had not been on the books a year when half a dozen cases were brought to test its constitutionality and to obtain a construction of various sections of the statute. Framed originally as a tax on manufacturing and mercantile corporations, the definition of manufacturing and mercantile corporations was so general that the law was amended and it now includes all business corporations, with certain limited exceptions. Even now, the City of New York is taxing many local express and transportation companies although these companies are taxed under the business corporation law and are therefore exempt from local taxation.

Aside from the questions of constitutionality, the most important questions raised in the courts covered the definition of net income in the New York statute and the matter of allocating and segregating the income of corporations doing an interstate business. Of the four important states having corporation income tax laws—New York, Massachusetts, Connecticut and Wisconsin—all vary as to the exact terms of the net income to be assessed for state purposes. The three former states adhere closely to the net

income returned to the United States Treasury Department. New York, however, does not permit the deduction of excess profit taxes, of interest in federal securities, or of dividends, although these items are deducted in computing the net income for federal purposes.

The question of allocation of income has perhaps created more litigation than any single subject of state income taxation, when applied to a corporation doing an interstate business. Whatever scheme of allocation may be adopted will not fit every case. Your model income tax will be no exception to the rule. A simple plan of allocation like that provided in the New York or Connecticut corporation income tax law will work better than the more elaborate or complicated plan contained in the model income tax plan. In connection with the subject of allocation, it seems to me appropriate that corporations or individuals keeping their books in such a manner as to clearly reflect their income earned in the state should be permitted to segregate their income in conformity with their books. For instance, engineering companies, contracting companies and construction companies that are able to show from their books the income earned in each state in which they do business, should be permitted to do so.

One shortcoming that I find in the model plan is that it does not provide for a substantial minimum tax on the basis of tangible property or capital stock, in default of income for any year. The minimum tax of \$5 in the model plan is negligible and of little value in any important commercial state. The history of both the state and federal income taxes shows great fluctuation of income. The state will suffer great loss of revenue in poor years and will be called upon for new sources of revenue.

The provision in Section 504 of the model income tax law, making the tax a debt, is, I think, in the case of a non-resident, open to serious question. Assessors cannot obtain jurisdiction by claiming that they have it. In the case of a non-resident, the jurisdiction of taxing authorities can be questioned at any stage of the tax proceeding, and the fiat of the legislature that the assessment is a debt will not, in my opinion, stand in the courts.

In connection with the general exemption of personal property in Section 291, the wisest injunction would be to "hasten slowly". There have been and will be serious raids upon the public treasury by reason of general exemption clauses. This has been due to hasty legislation, without careful comparison with the tax law of the state and the statutes of the United States, witness the general exemption of fixtures and machinery under the New York corporation income tax law, under which much that formerly had been assessed as real estate was exempted entirely from taxation; witness also the omission in New York's personal income tax law

to specifically exempt the income from bank stock and to otherwise provide amendatory legislation. If the suits started and to be commenced by the banks are successful, the State of New York may have to refund \$15,000,000 of taxes.

After all, the kind of business income tax, or property tax, any state may adopt, will depend largely on its physical, political and commercial conditions. The corporate income tax is the easiest and simplest to adopt and the least expensive to maintain. Aside from the State of New York, I doubt whether any large state will tax its non-resident employees and wage-earners on income earned from personal service in the state. After all, it is more important for the state to obtain the labor than to secure the tax. The conditions in New York are so peculiar that it may be countenanced in that state. In other states, the revenue from this source will be unimportant and the economic advantage doubtful.

CHAIRMAN BULLOCK: That completes the regular list of speakers and the subject is now open for discussion from the floor. Are there any gentlemen present who wish to discuss either the personal or business income tax?

CHARLES J. TOBIN: I should like to make an inquiry as to what the committee had in mind in its treatment of private bankers—that is, as to the business of private banking. Under this proposed model law the plan appears to exempt banks, savings institutions, insurance companies and trust companies and corporations wholly engaged in the purchase and sale and the holding of title to real estate, but there is nothing in the proposed bill so far as I have examined it, and so far as I can find out, which specifically cares for the subject of private bankers. Under New York laws they pay but very little.

CHAIRMAN BULLOCK: Under this bill I think, if residents, they would pay the personal income tax and also the business income tax; if non-residents, they would pay simply the business income tax.

MR. TOBIN: I don't believe you have in any way included them in the scope of this act, as far as business income tax is concerned.

CHAIRMAN BULLOCK: Mr. Bond, will you bear that in mind and see whether that is done; is it your impression that there is inequality?

MR. BOND: We certainly intended to include them, I am quite sure.

CHAIRMAN BULLOCK: I shall be greatly surprised if the language of the bill does not include them.

MR. TOBIN: There are several other minor matters at this time, if I may be permitted. On page seventeen, in subdivision four of Section 201, you exempt such corporations as cemetery corporations, religious, scientific and educational corporations, but you do not treat hospital corporations. Under the New York law "hospital" corporations are set out separately. They are incorporated under a separate provision of the statute, and I believe if you are going to exempt certain specified corporations in this model bill, "hospital" corporations should also be separately stated.

In the ninth subdivision of Section 201, you may wish to consider the business status of the Dairymen's League—whether it is to be exempted. It is a business proposition in New York, competing with other milk concerns, and they do a very extensive business, and under the bill you have here the Dairymen's League would be exempt from paying taxes. There is no reason why they should be, no reason I know of, that they should be exempt, because they are competing with private capital represented by the individual and represented in corporate form.

On page 22, Section 310, the language of the bill reads: "Said taxpayers shall, within thirty days thereafter, file with the tax commission, under oath, a statement supplementary to the return, in such detail as the tax commission shall require, showing the amount of his annual net income derived from trade or business carried on in the state." Query—Is the basis of such net income to be established by the tax commission or is it intended that it should be set up in this particular bill? I think that is quite important, because if you are going to burden the individual and burden the corporation with a great detailed report, it simply means just so much more expense in carrying on its business, and we know that today every business is hampered and interfered with by the numerous reports they are called upon to make.

I just want to raise another question, if I may be permitted, Mr. Chairman; on page 23, Section 500—whether or no it would be advisable to permit more than one payment of the tax, that is, that the tax be paid in two installments. It works out to advantage under our federal law, and while under our state law they require the tax to be paid in one amount, I think for the business income tax, which runs into a lot of money, that the taxpayer should be permitted to pay at least in the fore part of the year and the latter part of the year, or some such manner as might be arranged. On page 25, Section 504—some notice should be arranged for, or some notice should be posted, so that people taking title would know whether the taxes were paid as required by this act, they becoming a lien. That is, the tax would make a debt and it would become a lien upon the property, unless it is posted in some way, so that the



taxpayer or the person representing the taxpayer can go to some particular place and find out if the income tax or this particular tax is paid. I know today, in passing title, that it is not the easiest task to know whether the tax has been paid by the individual, and I think that some better arrangement should be made, and I think we should make it in this bill. I don't know just how to go about it, but I do believe where a title involves a lot of money, that we should fix in some definite form whether that tax has been paid or not under the law, as required.

I cannot quite understand why you are asking for a certificate in addition to the tax receipt, under Section 506. I should think that the receipt itself would be sufficient, without an additional certificate required there. There may be some special reason for it, but it has not occurred to me why.

On page 26, paragraph 7, you say the attorney general shall have the power, with the consent of the tax commission, to compromise any penalty for which he is authorized to bring action under subdivisions 5 and 6 of this section. That is a little drastic on the attorney general. If he wants to obtain the consent of the tax commission, I think it will be preferable to make it with the approval of the tax department instead of with the consent of the tax department.

I should like to have explained, if I may, just the occasion or reason for doubling the tax if the taxpayer fails to pay his tax. A man may have the best reason in the world or the best excuse in the world in failing to pay, and still his tax is doubled, and you force him to go through all the procedure and machinery necessary to get this remitted. It is a bit harsh. I think that the law in that respect should be broader; that it should be stated, as a matter of right, what the taxpayer should do, in order to allow him to pay the tax as levied, instead of doubling the tax, in the first instance. That is on page 25, paragraph 600, second subdivision. I thank you very much.

J. F. ZOLLER of New York: I just want to make one point: I want to discuss with you just a moment Section 304 on page 7. I am not so much interested in the fact that this is a law intended to extract taxes from individuals and corporations as I am in being sure that the income is derived before you tax it. Now, we must keep abreast of the times, and to show you the force of example, I want to say that many states have already copied the provisions of the federal law concerning the taxation of income derived or profit derived upon the exchange of property. I hold in my hand a copy of the New York Income Tax Law and I notice that the provisions of the federal law have been copied verbatim. The present federal law was enacted during a war, and the chief advocate of that measure was Mr. Kitchen. I am

not criticizing him, but he was a man that desired to tax everything that looked like income, whether it was actually income or not. The present situation is different. We have reached a point of reconstruction, and we are trying to encourage business, and we want to refrain if we can, from taxing business or an individual, upon income that is not actually realized. Under the pending bill, it is first provided that in the case of exchange of property, there shall be no income at all unless the property exchanged has a readily ascertainable market value. You have anticipated that in this act, but the federal law goes further than that—I mean, the present bill goes further than that. In the present bill even if the property exchanged has a market value, there is no taxable income if the property exchanged is of like kind—that is, one plant may be exchanged for another, and there is no taxable income. Another case is that of a reorganization or consolidation or merger of a corporation—those are all business transactions; the present law provides that in that case there may be a tax, as you recall it, if the aggregate par of the securities you receive exceeds the aggregate par of the securities you turn in for cancellation. Because of that fact, many business transactions that should have been carried through during the war were not carried through, because individuals were not anxious to pay a tax when they simply received stock in another corporation for stock in a corporation which had already been organized prior to this merger or reorganization. That is, a person is not interested if he holds stock in a corporation of the name of X to exchange that stock for stock in Y corporation, representing the same properties, if he is to be taxed. He has not realized any profit by that transaction, or income; he has simply received new stock. He does not know that the new stock is of any more value than the old stock. Under the present law there might be a tax in that case, and many business transactions were not carried on, many exchanges and consolidations did not take place that should have taken place. In the pending bill there is no tax at all in the case of reorganization, merger or consolidation of corporations where you simply receive new securities for securities already held.

Another case is where property is transferred to a corporation for stock, there is no tax in that case under the pending bill. That is, if three individuals, for example, organize a corporation and they transfer property to the corporation for stock, they then have stock in place of the property but they have not realized on the property; they have not converted it into cash, and under the pending bill they would pay no tax, providing the individuals that controlled the property control the corporation to which the property has been transferred. I think this is a step in the right direction at this time, and I think that it is a thing that should be

considered in connection with this model law, that where there is simply a change in organization, where there is no income actually realized, there should be no tax, because if we are to get on our feet again, we have to take advantage of all business transactions that are possible; we have to encourage everybody to take a chance; to undertake to do business; and they won't do that if they are to be taxed on something that they don't actually realize in income as a result of the transaction. I think this is very important; I think this is one of the most important provisions in the pending bill. The spirit of the pending bill, as I understand it, is to do what can be done to encourage the carrying on of business, and at the same time provide the needed revenue for the government.

CAPTAIN WILLIAM P. WHITE: Speaking about the income tax, I usually refer to it as the invention of the devil and his minions, so my remarks may not receive sympathetic attention.

Professor Fairchild believes that a direct tax such as the income tax will lead to a greater interest in government affairs, as it will bring into being a body of public opinion interested in the expenditure of public money. He seems not to take into consideration that the tax is imposed upon a minority whose influence decreases in proportion to the increase of the tax they pay. In a democratic government there must be brought home somehow to all the people their responsibility for their representatives in Congress and elsewhere, who appropriate moneys for public use.

Wherever inaugurated, income tax laws tend to develop ultimately the kind of looting characteristic of Turkey, where the principle of taking from him that possesses has reached its logical conclusion.

The exemptions of the income tax law relieve the many from the payment of such tax, and while every one receives the same exemption, the sum to be collected must come from those who do pay the tax. The tendency is to raise the limit of exemption, thereby decreasing the number of government critics, and to increase the rate of the tax, the greater the income.

*Income* means payment for services, interest or returns from investment. Under the law, however, income has been construed as including the possible gain from the sale of real estate or capital assets, such as stocks and bonds. Owners rarely sell property for the purpose of using the possible gain as income. Certainly, those who did so during the recent period of inflation found on reinvestment that they were the poorer by the tax levied on the alleged profits of the sale.

Again, as to the method of ascertaining the tax:—An acquaintance of mine sold a property in which he had lived for twenty years for approximately what he had paid for it. The tax official

who called upon him to investigate the profit from the sale showed by deductions for deterioration during the period of occupation that he had made a decided gain, denying the inclusion of items of expenditure on the property for additions and improvements. The tax was paid rather than take the trouble of fighting it.

A law that permits such inequities of practice is indefensible and I protest any such so long as it is practicable to frame legislation easily understood, equitable to all alike and requiring no tax expert to determine the levy or to review the return. Such a system has been in use to supply the government with ample funds for 150 years, and by which the expense of a great war was paid.

For those who receive a salary only, making an income tax return is comparatively simple. Not so for those whose business affairs are more complicated and involve the sale of property. It is for including in the present bill all the bad points incorporated by Mr. Kitchin, for the purpose of getting money out of those who had it, that the bill is to be condemned.

The taxation of corporate income is even more to be condemned. Corporate incomes are matters of bookkeeping, purely and simply. The actual gains and losses from business may not be determined for a number of years, sometimes only when the business is finally liquidated.

The inventory values which enter largely into the determination of profits may be taken at purchase price or market value. For material recently purchased, the problem is simple, but the value of material long in hand, and that in process, is not so readily determined.

Accounting which may have been entirely suitable for business purposes must now be modified to suit the regulations issued by the Secretary of the Treasury for taxation purposes.

Such methods of taxation I believe unfair and unjust to business and will ultimately result in crippling, if it does not destroy, industry.

J. T. WHITE of Ontario: It strikes me as unfair that the minimum taxable income should be the same in all places. It costs much more for a man to live in the larger cities than on the farm, or in a small town, or even Bretton Woods; and I do think that some provision might be made for a sliding scale, according to the place of residence.

MARTIN SAXE of New York: Mr. Chairman, I want to say a word in support of the point made by Mr. Zoller. For this bill to live up to its description of a model system of income taxation, I think there ought to be included in the definitions a definition of realized income. That would do a great deal to clear up a good many differences, which, as Professor Fairchild pointed out, are

bound to arise as between the accountants, and I should like to give that thought to the committee for their consideration when they come to consider amendments.

CHAIRMAN BULLOCK: Can you give us any suggestion to stand on.

MR. SAXE: No, except in a general way; I appreciate it is difficult.

HUGH SATTERLEE of New York: First of all I should like to say that such reading as I have been able to give this proposed income tax act has impressed me with its excellencies and has made me have a very high appreciation for the work that has been done by Mr. Bond and Mr. Holmes and the members of the committee. On every page I have found things to admire. As a matter of fact, aside from certain questions which are involved in similar provisions of the federal statute, which I understand is to be postponed until Thursday for discussion, the only thing in the bill that I feel called upon to say anything about is the same provision that Mr. Zoller spoke of, and the gentleman who spoke last also mentioned, the provision with reference to exchanges of property.

As a matter of fact, my first reading of Section 304 led me to believe that it was similar to the provision, in a general way, in the pending federal bill, and I let it go at that, and it was only tonight, when I read it over again, that I realized that in subdivision 3 it was apparently the intention to tax as realized income the theoretical gain which might arise from exchanges of stock and securities for other stock and securities, in connection with corporate mergers, consolidations and reorganizations. That, it seems to me, is hopelessly wrong and a very serious step backwards. If I may mention for a minute the history of the taxation of exchanges of property under the federal income tax, it may help us a little bit in the consideration of this provision.

As you all know, under the earlier federal acts, the excise tax act of 1909 and the income tax acts of 1913, 1916 and 1917, there was no express provision taxing the income which might be realized from the exchange of property for other property, whether stocks or other kinds of property; as a matter of fact there was a great deal of confusion in the administration of these various taxing statutes as to whether exchanges of property did result in taxable income. The subject falls naturally into two parts, of exchanges of ordinary property and exchanges of corporate stocks and securities. Although in Regulations 33 revised, which came out early in 1918, for the administration of the acts of 1916 and 1917, there were rather cryptic provisions which indicated in a general way that exchanges of property for stock in connection with the organization of corporations or sales by corporations of

properties might disclose taxable income, though the provisions were not all consistent, there was nothing, as I recall, in the regulations which applied to exchanges of ordinary kinds of property.

In fact, I well remember that along in the spring or early in the summer of 1918, the question was squarely put up to the Internal Revenue Bureau as to the taxability of income which might be considered to be derived from exchanges of ordinary property, and Fred Field of Boston, who was then one of the assistants of the solicitor in the Internal Revenue Bureau, wrote an opinion in which he held that such exchange was taxable where the property received in exchange had a market value. That opinion was considered so epoch-making and so much of a decisive step in advance of anything that had been done before that Arthur Ballantine, who was then solicitor, personally took it in to Commissioner Roper and talked it over with him and explained to him that this was a point that had never been definitely decided and which this opinion, if adopted, would conclude for the present at any rate.

And so, as late as 1918, there was no definite rule in the Internal Revenue Bureau, although I notice in recent decisions and special rulings which are issued from time to time by the Bureau, the Bureau officials are pleased to say that the rule of the Bureau has always been consistent in that respect. It has not been consistent. In the early files of the Corporation Trust Company you will find several diametrically opposed letters from Commissioner Osborne and other Commissioners on this point.

In the act of 1918—or to go back before that—in this same summer of 1918 the question of exchanges in connection with corporate mergers, consolidations and reorganizations, and organizations, came up for reconsideration, and Solicitor Ballantine at one stage of the game definitely made up his mind to recommend to the commissioner that under the language of the act then in force—the acts of 1916 and 1917—it was not necessary to hold that such exchanges might result in taxable income, and in fact a treasury decision was prepared for submission to the secretary for signature, to the effect that such exchanges should be considered not taxable, but at the last moment Mr. Ballantine decided it might make too much of a mix-up in the existing rulings on the subject, and he decided to try to have the matter remedied by statute.

In the first draft of the Revenue Act of 1918 not only was the provision put in that exchanges in connection with corporate mergers, consolidations and reorganizations should not be considered taxable, but also the similar provision to this, that in connection with the organization of a corporation the exchange of property for stock should not be considered to result in taxable income. Then, however, somebody in Congress—Mr. Kitchin or somebody else—thought the provision was too broad, and the limitation was

put in that the new stock and securities received in exchange must not be in excess of the par value of the old stock and securities, and then it was called to the attention of Congress,—I am afraid I did it myself,—it was called to the attention of Congress that the provision for the exchange of property for stock was so broad that, unless qualified, it might be considered to include the exchange of stock for other stock and would practically nullify the limitation. The Ways and Means Committee or Finance Committee, I forget which it was, took a different attitude and cut out altogether the exception, permitting the exchange of property for stock in connection with the organization of the corporation, so there was left simply the exception from the general rule in connection with the reorganization, merger or consolidation of corporations, where the new stock or securities had a par value not in excess of the old stock. That limitation on par value was subsequently nullified by the decision of the Supreme Court in the stock dividend case, which made it possible for corporations who wanted to merge, and so forth, to increase their capital stock and get around the limitation. So, in the pending federal bill, the situation has been very much helped, as Mr. Zoller has said, by providing that not only for purposes of reorganization, merger and consolidation, there is no taxable income to be considered derived, but also in the exchange of property for stock of a corporation where the corporations remain in the control of the hands of the persons who traded the property.

To come back to this bill from this rather long digression, this bill I think is thoroughly in line with the best thought in the matter, where it provides in the case of organization of corporations, exchange of property shall not be taxable; but I think, as I said, that it is going backward by providing, as it seems to me, that in connection with the reorganization, merger or consolidation of corporations, exchanges may be taxable, as Mr. Zoller has said better than I could. The reorganization, merger or consolidation of a corporation means not that the stockholders are getting out of the enterprise, but in the very nature of the transaction means they are staying in the enterprise; they are not disposing of their investment, they are retaining their investment in slightly different form; and I think it would be, not only as a practical matter, very serious to business to retain this provision in its present form, but it would also be opposed to what at least in my humble opinion is the proper theory.

CHAIRMAN BULLOCK: If there is no other speaker who has not taken part in the discussion before, I will recognize Judge Knapp at this time.

WALTER H. KNAPP of New York: Referring to this proposed

bill, which is very like the New York state bill, I notice that you advocate very strongly, and very properly it seems to me, the exemption of intangible personal property, really as a condition precedent to the enactment of an income tax. Everybody will agree that you cannot tax or ought not to tax the corpus of intangible property, if you are going to tax the income the way it is proposed here. New York state just at the present time—I think, during the last legislature—had a very serious discussion regarding the total exemption of tangible personal property as well as intangible.

Now, I am sure that would not meet with the approval of many of our friends in the south and in the west, who are seeking every item of personal property for taxation. The people of the State of New York, however, apparently would not stand for a listing system. I do not believe one could be put into effect in the State of New York under any circumstances; and having no such system we are practically helpless in the matter of the assessment of tangible personal property. The total assessment of tangible property outside of the City of New York at the present time is only about sixty-five million dollars, and it has occurred to a good many of those who are studying the subject, that it ought to be exempted, because of inequality resulting from evasion, and because of the fact that so much of this property is actually used in the production of taxable income. If intangibles producing income are exempt, why should tangibles which produce taxable income be taxed? I don't believe in New York State we have any particular use for a business income tax, such as is suggested here. We have a very satisfactory corporation franchise tax, which is based upon the earnings or measured by the earnings of the year preceding, and is for the privilege of doing business in the next succeeding year, though it may be called and has sometimes been called an income tax. We treat everything a man earns—all other income—as the income of persons and tax it as such. If a man has a stock of goods in which he invests his money and turns it over and over during the year and gets his income from it, he is taxed on that income. To some of us it does not seem fair that he should be taxed upon the corpus of this investment, while the man who puts his money into stocks and bonds and turns them over and over escapes taxation upon his intangible capital. It is the same way with many of our farmers, who have their cattle and sheep upon the hills and various other things into which they put their money, or borrow capital for the purpose of producing an income upon which they are taxed; why should they also be taxed upon the corpus of property of that character? I do not want to utter any prophecies, but the legislature last winter came very near making a total exemption of personal property for the



reasons stated, and the matter is sure to come up again. Of course, there is a class of property such as diamonds and jewelry, musical instruments, libraries and art, and all that sort of thing, that produce nothing, and yet some people think they ought to be included as objects of taxation. I merely want to throw out the suggestion of the possible exemption of that kind of personal property that is used in the production of income, as to whether or not it should not be treated the same as invested intangible capital.

CHAIRMAN BULLOCK: Gentlemen, I should like to state before Mr. Ivins speaks that he is now at the head of the New York State Income Tax Bureau, the successor of our friend Mr. Graves, who addressed the last conference on this subject of the model tax report—Mr. Ivins.

JAMES S. Y. IVINS of New York: Mr. Chairman, ladies and gentlemen: In this model income tax law we have section 303 providing the method of determination of gain and loss. As previous speakers have said, this question is now opened up again by the pending federal law, and by the decisions in the Brewster and Goodrich cases. Since we cannot feel sure just how the federal law is going to shape up I want to make this suggestion for consideration, possibly in framing federal laws as much as in framing state laws. The scheme of the model tax law and the scheme in the existing federal law contemplate, for certain purposes at least, a re-appraisal of property as of the date of the inception of the tax. The man who acquired property ten years before the tax law took effect, and sold it ten years afterwards, the Supreme Court held in cases under the income tax law of the Civil War times, could not be taxed on the entire profit derived during that whole time. The taxpayer was entitled to be taxed on only so much of the profit as properly could be allocated to the time since the law went into effect. In the Brewster case and the Goodrich case they say that a re-appraisal on the date of the inception of the tax cannot be made to turn an actual loss into a theoretical profit for the purpose of taxation; but the Supreme Court did hold in the old cases that it was fair enough to prorate the total actual gain or total actual loss as the case might be over the entire time the property had been held by the taxpayer.

In New York we have a law that is a little different from this proposed law—but it does necessitate the appraisal as of the date of the inception of the tax, January 1st, 1919. If a man's property was worth more on January 1st, 1919 than when he bought it, and has gone up still more since then, he is required to pay on the difference between the January 1st value and the sale price. If it has gone down in the meantime he is taxed only on the actual profit. So we always have the question, as you will always have it

under this section: what was the value on the date of inception of the tax? It necessitates a *nunc pro tunc* appraisal, and we find that *nunc pro tunc* appraisals in practice are very unsatisfactory. If you let the taxpayer just make his own appraisal, he says: "I bought this property for one thousand dollars in 1917 and sold it for five thousand dollars in 1921, but it was worth six thousand dollars on the first of January, 1919, and I ought to have a one thousand dollar deduction." We doubt very much whether it really was worth six thousand dollars on that day. Now, if we require him to get an appraisal by an expert, that appraisal—the service of the expert—is going to cost him anywhere from one per cent, if it is a matter of one thousand dollars, down to one-tenth of one per cent if it is over one hundred thousand dollars, but in most cases the difference involved won't justify the expenditure of the fees of the expert, because the tax involved will be less than the fee. It imposes a burden upon the taxpayer which is not compensated by the benefit derived. In the case where the benefit to be derived by getting the expert and putting in an appraisal is sufficient to make it worth while; it is also sufficient to make it worth while to get a prejudiced expert, which makes it necessary for the state to seek a counter expert, and then you get an issue of fact. You have to try out the issue of fact somehow or other or somebody has to make the determination. It is usually a compromise. It costs the taxpayer and it costs the state more than the difference in tax involved. Now, we have adopted a practical method of working it out. A great many taxpayers have come in and said: "This is the situation. I believe the property was worth so much on the first of January, 1919, but I cannot afford to get expert evidence on it because the tax involved is not as much as the expert's fees would be." We have applied the old rule that the United States used in the sixties and said we would prorate the profit or loss on the basis of the time that they have had the property. If they have had the property ten years and five of them within the period of the tax, half of the profit will be taxable. And the taxpayer has been satisfied with that every time.

The Supreme Court of the United States held that it was a fair and proper method, and I suggest that it would be a much more expeditious and satisfactory method to both the taxpayers and the state, if it were substituted for the method provided in this model tax law.

While I am on my feet I might mention a couple of things that Mr. Tobin brought to mind. He wondered why the attorney general should be limited in his power to compromise these tax cases. I was in the attorney general's office when we put such a provision into the New York tax law, and I can assure Mr. Tobin that the attorney general does not want an unlimited power to compromise,

because it would always result in politics, politics, politics. It is much better to have the compromise powers divided so that the pressure of politics will be lessened.

As to the suggestion of Mr. Tobin that the collection of the tax might be divided into several installments, as in the federal tax, I say the answer to that is the same as the reason why a merchant doing business on a cash basis can sell his goods for less than a merchant doing business on the installment plan. The cost of collection and bookkeeping would be so great in comparison to the slight benefit to the taxpayer, in the case of taxes at low rates such as are provided here, that it would not be justified.

CHARLES J. TOBIN: If I may interrupt, I had particularly in mind, Mr. Ivins, the business income tax, where the tax would run into a considerable sum of money. I have consulted some of these companies. It was found quite embarrassing to a great many corporations under our federal law to pay all their taxes or to pay even the quarter that was required of it first, so that I feel that not only the state must be considered but also the taxpayer, and in a great many of the city charters in New York today, that are up to date, the payments are so arranged that the city gets part of its money the first part of the year and the remainder of the money about the second half of the year; and I thought it was proper and right that the taxpayer should be given at least an opportunity to keep a part of his money in his business instead of giving it all to the state at one time.

MR. IVINS: There is no question about the advisability in the case of taxes at high rates.

MR. TOBIN: If he has to pay sixty-five per cent on his income, he cannot pay it in one installment.

MR. IVINS: Mr. Tobin also made mention of the matter of lien. This law is like the New York law in that respect. It does not become a lien until a warrant is issued for it and filed in the recorder's office, and that is the public notice asked for.

MR. TOBIN: My point there, prompted by the difficulty in passing title, is that the public will not always accept it that way, although the law reads that way. It would protect people who pass titles of others, to embody a little bit more than is in the present statute. We ought to go a step further. It is all right to write an act which does certain things, but there are other things which have to be cared for, particularly in the transfer of property, and that is why I suggest that some notice should be posted, or at least that there should be some place where we could get a certificate from the State Tax Department to the effect that the tax had been paid, so that it could be attached to the abstract of title to property and pass the title.

MR. IVINS: There is one other thought that comes up in the determination of gain or loss. The federal government held that a gift was not "such other disposition". We held in New York that it was "such other disposition", and the court overruled it in the Wilson case. Mr. Wilson bought some speculative stock for five hundred thousand dollars. When it was worth one million dollars, instead of selling it, he made a present of it to his sons, who sold it very promptly. There was five hundred thousand dollars realized income, which was not realized by Mr. Wilson, and they said it was not income to the sons because they got it by the way of gift. But if any income ought to be taxed, that income ought to be taxed, and I think something should be put into the model tax law to cover the case of gifts. The suggestion has been made and we propose to introduce bills in our legislature to provide that when a donee sells property, he may be taxed on the gain or take credit or deduction on the loss, in comparison with the cost to the donor; that is, we regard the donor and donee as one holder and the difference between the cost to the donor and the proceeds to the donee should be taxable. I think that when you stop to consider all the possibilities of deliberate defeat of the income tax law through the form of gifts, you will agree on that point.

A. H. DALRYMPLE: I left my voice on the summit of Mount Washington, but if I can make myself understood I should like to ask Mr. Carter a question. It was suggested in his criticism that beneficiaries under a trust should share in a loss through the sale of property by the trustee. The New England Trust Company has a number of such beneficiaries who would like to take advantage of any such laws. But, when we ask them if they are willing to pay a tax on the gain derived from the sale of property by the trustee, they are not so willing to assume the tax. In other words, it is a practical rule that will not work both ways, and I would like to ask Mr. Carter what he would suggest in the case of a profit instead of a loss.

MR. CARTER: That is, perhaps, a difficult question to answer. It has been brought up again and again. As a matter of fact, if you dispose of property at a loss, the beneficiary during his life tenancy loses the income on that property. It is not a loss for one year, it is a constant loss.

MR. DALRYMPLE: May I ask a question there: Isn't the beneficiary protected by not having to pay any tax on an income that he does not get?

MR. CARTER: If you make a profit and the fiduciary pays a tax on the profit, and the increase in the corpus of the estate requires

it, the beneficiary gets no profit—the fiduciary has paid the tax—then the beneficiary gets the benefit of the increased income which is the result of the increase in the corpus invested by the fiduciary, and he is paying a tax on an increased income. He gets the benefit of the income but he is paying a tax on that income when he gets it. If it is a loss, he is losing for the whole period of his life-tenancy a certain rate of income on an investment which should have had a definite yield. Most trusts, as you know, are run upon a yield basis, and he is not protected upon that yield basis. In New York State, if a trustee under certain conditions buys a bond at a premium, he is permitted to amortize that property so that when the bond is paid on maturity, the corpus of the estate remains the same. On the other hand, accumulations have been considered against public policy, and even if there are natural accumulations, if the trustee takes any loss away from that corpus the beneficiary suffers. It may be small in many instances; in some instances it would amount to a great deal where there is a loss in the value of securities and the securities are sold, or where there is a loss on a reorganization the beneficiary has a definite loss of the income from the balance which is received upon the sale which is re-invested, and does not get the same definite yield that he got on the original cost that was invested. It seems as if there should be some way in which it could be worked out. You might have to apply some definite rate of income and rate of yield, which might be taken as a deduction over a period of the life tenancy; but it seems as if there should be some way of permitting both the remainderman and the life tenant to take advantage of the loss, which is a definite loss.

**CHAIRMAN BULLOCK:** I permitted this discussion of the income tax to continue until nearly eleven o'clock because I had forgotten, until Mr. Holcomb reminded me of it, that we have two committee reports. I will submit that my intentions have been good, and that I have not desired to limit this discussion, but that it is absolutely necessary to cut off the discussion here and turn to these committee reports. I haven't any excuse to offer for my omission except that in my anxiety that this discussion should be full and as long-continued as possible, I completely forgot the other weighty matters. Now, the first of these reports is the report of the sub-committee on the apportionment of taxes on interstate mercantile and manufacturing business. Mr. Carl S. Lamb of the Pittsburgh Plate Glass Company is the chairman of that committee.

**CARL S. LAMB:** Mr. Chairman and gentlemen: This committee was appointed early this summer or late in the spring, just at a time that vacations began, and although we have been rather diligent in getting our thoughts together, no opportunity was offered

members of the committee to face one another until reaching this conference. There are nine men on the committee and I believe there are seven in attendance at this conference. We have had two meetings at which we have made some considerable effort to reconcile the views of the various members of the committee. We have carefully considered the methods of apportionment which are in use in the various states; but candidly, gentlemen, the committee, I believe, is handed the hardest nut to crack in the whole question of state income tax—the question of the apportionment of income of those companies or businesses that are interstate in character. The committee expects to have further opportunity of meeting during the sessions of this conference and if possible to make a report at a later time during this week, and if that is not possible, the committee asks to be continued.

**CHAIRMAN BULLOCK:** The gentleman is not far from wrong in saying that the model committee did pass one of the toughest nuts or did pass the buck most emphatically to this committee on the apportionment of the income of manufacturing and mercantile corporations.

The other committee is that appointed to consider the apportionment of taxes on public utility interstate business. Senator Davenport of the New York Senate is chairman of that committee—Senator Davenport.

**FREDERICK M. DAVENPORT** of New York: Professor Bullock and members of the conference: My information is, having myself been introduced to this subject only a short time ago, that at the last session of this association a committee was authorized on the apportionment of taxes as between states on railroads and public utilities. In addition to the chairman, the members of this committee—quite recently appointed, within a number of weeks—are Mr. Fletcher, secretary of the Nevada Tax Commission, President Jess of the State Board of Taxes and Assessment of New Jersey, Judge Armson of the State Tax Commission of Minnesota, Professor Fairchild, Mr. Sanders, Tax Commissioner of the Northern Pacific Railway, Mr. Goodwin, Attorney for the Union Tank Line, and Mr. Whitney, Tax Attorney for the Western Union Telegraph Company. There are five members of the eight of this committee who are at this conference, and we have had two or three discussions together.

We made up our minds in the preliminary correspondence that there was too much of a subject here for any single member of the committee to cope with, and so we have undertaken the method of combined intelligence and we have gotten far enough along with that to be perfectly sure that the combined intelligence of this committee has possibilities, but like all great bodies it is mov-

ing slowly. Mr. Goodwin of the committee has furnished a memorandum—a very excellent one—on the methods of taxing private car lines, in which it appears that this type of tax is limited by the rules applicable to property taxes, purely and simply, and the states haven't the freedom that franchise and license taxation sometimes gives. Mr. Fletcher has given us a memorandum upon the taxation of public utilities in Nevada and called attention to a point which the committee takes great stock in, that it is very important that before we do much work upon an apportionment, that we should do a great deal more work upon the equities of public utility taxation. Judge Armson has furnished us with a memorandum—a very excellent summary of the method of taxing railways. We are engaged, then, in the business of gathering material. We have gotten far enough along so that we are unanimously sure, up to date, that public utility taxation generally in the country, outside of one or two or three states possibly, is a mess. Now, I can speak with freedom about that, because I suppose the biggest mess is in the State of New York, from which I come. The question that arises, then, is whether the committee shall undertake, for the country and for the National Tax Association, the apportionment of a mess. We have decided not. We have decided that what is needed is a further survey, the sifting of state experience in public utility taxation, and a further survey of other utilities than those which are already under advisement. And then, having determined the sound principles of public utility taxation, as a background to apportionment, that we may go ahead with the subject of apportionment. Under those circumstances, Mr. Chairman and gentlemen, all that the committee can report tonight is progress, and not having the power under the resolution a year ago to do anything in this larger area, I should like to suggest that if you wish to have us go on with this subject of apportionment, we should be given greater power to look into the subject of the equities of public utility taxation.

CHAIRMAN BULLOCK: Gentlemen, both of these committees were appointed late last year. Brother Holcomb had great difficulty in securing the consent of a sufficient number of qualified gentlemen to make up these committees. I am sure you will be satisfied from what you have heard this evening that both committees, although appointed late in the year, have tackled their subjects in a manner that promises results in the course of another year if they are continued. Most of the good work that has been done by this association has been done by committees that did not solve offhand, in a short time, the problems committed to them, and have come to us with progress reports and suggestions that they be continued. I have no doubt but what the executive committee of the association will be very glad to act with reference to

both of these suggestions. Now, gentlemen, it is after eleven o'clock.

Mr. HOLCOMB has an announcement.

MR. HOLCOMB: I have a resolution.

CHAIRMAN BULLOCK: The secretary will read the resolution which is to be referred.

SECRETARY HOLCOMB: This is a resolution presented by Douglas Sutherland:

RESOLVED, That pending:

*First*, a thorough investigation of the field of federal grants and subsidies to state and local governments and,

*Second*, the establishment by the United States Government of a sound national policy fixing the character and purposes of activities to be undertaken by the federal government and for which money may be properly appropriated out of the United States Treasury, no new legislation creating such aids, grants, or subsidies to the states and their subdivisions be enacted.

CHAIRMAN BULLOCK: Under our rules this resolution will be referred, upon reading, to the Committee on Resolutions.

The Chairman of the Committee on Resolutions has an announcement to make before adjournment.

CHARLES J. TOBIN: I should like to announce the members of the sub-committee of the resolutions committee: JOHN H. T. McPHERSON of Georgia, H. S. VAN ALSTINE of Iowa, H. H. BOND of Massachusetts, JOHN EDGERTON of Montana, GEORGE E. WALLACE of North Dakota, WILLIAM BAILEY of Utah, L. W. DONLEY of Manitoba.

As there is only one resolution for the committee to consider, there will be no meeting of the general committee tomorrow morning, and no meeting of the sub-committee. I should like to ask all members in attendance if they will be kind enough to hand in their resolutions immediately because the committee on resolutions desires to make its report to the conference early; in other words, we do not want to be choked up with a lot of subject matter which cannot be fairly treated and correctly treated, as at the last session.

CHAIRMAN BULLOCK: I have one other announcement that has just been handed to me; there will be a meeting of the inheritance tax committee tomorrow morning at 9:30, place not stated, but presumably in one of these rooms leading off the main hall. All those interested in the subject of inheritance taxation are invited by Mr. Belknap, the chairman of this committee, to be present and to confer with the committee at that time.

[Adjournment of Session.]



## FOURTH SESSION

WEDNESDAY MORNING, SEPTEMBER 14, 1921

CHAIRMAN BLISS: The meeting will come to order. The secretary has one or two announcements to make.

SECRETARY HOLCOMB: One resolution has been presented:

Resolved, that the National Tax Association be requested to provide for a committee on forestry taxation.

CHAIRMAN BLISS: It will be referred to the committee on resolutions for regular procedure.

I will appoint Mr. Charles R. Howe of Arizona temporary chairman for this session.

CHARLES R. HOWE of Arizona, presiding.

CHAIRMAN HOWE: Gentlemen of the conference, this is the fourth session of the conference, at which we take up the matters of recent changes in tax laws, a summary of recent tax legislation. In our deliberations here I have noted the different problems that were presented from the New England states and other eastern states. We all have our problems, but there occurred to me one thing that nearly all of the tax commissions or taxing bodies could do without any special law; we have been doing this in Arizona for some time, and we find that it ironed out many of our problems there that we could not iron out otherwise. We hold each year after our tax rolls are completed an annual tax conference of all the assessors in the state and members of the boards of supervisors. At this year's conference, for the first time, we invited not only the taxing officials but representatives of every class of property in the state. We allowed great latitude, and the taxpayer himself felt that he was able then to talk heart to heart with the taxing officials; in other words, as we say in the West, he got all of it out of his system, and he felt much better when he went home. I feel that it did a great deal of good in Arizona, not only to the officials but as well to the taxpayers of the state. This is something that can be done in any state, I believe, without any additional legislation, and I think that in some of your New England states it might help some to try it.

Mr. Hannan of the legislative reference library of New York State—is Mr. Hannan in the audience.

SECRETARY HOLCOMB: Mr. Chairman, if you will pardon me just a moment, I should like to read these resolutions which have just been handed in, so we may have them on the record.

Resolved, that this conference is of the opinion that no private property or income should be exempted from taxation except that used exclusively for religious, educational and charitable purposes.

Resolved further, that this conference is unalterably opposed to the exemption from income taxation under federal or state laws of all salaries of public officials hereafter elected or appointed, or of the income from future issues of federal, state or municipal obligations.

Resolved further, that this conference favors the principles embodied in the House Joint Resolution 102, now pending in the Congress of the United States, urging the submission of a constitutional amendment for ratification by the several states.

Resolved, that the executive committee be and hereby is requested to appoint a committee to consider and report at the next annual conference of the National Tax Association in regard to the regulation and limitation of the annual expenditures of public funds.

CHAIRMAN HOWE: These will go over under the rules to the resolutions committee, without recommendation.

SECRETARY HOLCOMB: Mr. Chairman, in response to the first title, I wish to say that Mr. Hannan has done us a very great service. He has, at considerable trouble, investigated by correspondence recent legislation, and his paper will be a very valuable help to all of you when you finally see it in the published volume. He has sent a brief summary which I feel under the circumstances ought to be read. It will touch the high spots, and I had rather planned to open this session with that, but before reading it I should like to suggest as Mr. Hallanan of West Virginia is on the program; we hear him first, for reasons that are obvious.

CHAIRMAN HOWE: If there are no objections that will be in order—Mr. Walter S. Hallanan.

WALTER S. HALLANAN: Mr. Chairman and gentlemen of the association: I am here today as the representative of the State of West Virginia to address you on the subject, "Notable Events in State Taxation." My native state has been going forward progressively in recent years in the solution of the new problems of taxation that have arisen as our scope of governmental activities has broadened. However, the greatest distinction from the national viewpoint which the State of West Virginia may lay claim to is that it is the first state in the whole sisterhood of states to put into effect the principle of the sales tax as applied to all business and professional activities within the state. While the federal

Congress has been debating the practicability of the sales tax as a federal system, the legislature of West Virginia has seen fit to make this principle effective as a revenue producer for the state, and we are now in the experimental stage of its administration.

The West Virginia business-profession tax law, commonly referred to as the gross sales tax law, enacted at the last session of our legislature, to take effect July 1, 1921, since it is along new lines so far as the states are concerned, will no doubt be of interest to you, and I shall try to outline briefly its principal features; but before I do so I ask your indulgence for a few moments to briefly review the legislation, proposed and enacted, that during the last eight years has led up to our latest revenue law.

In 1914 and years prior thereto, the state derived its revenue from three principal sources: (1) from a small direct levy, ranging from one to six cents on the one hundred dollars valuation on all property in the state, our law requiring the valuation or assessment to be made on the basis of true and actual value; (2) from a charter or license tax on corporations, based on the amount of the authorized capital stock of domestic corporations, and on the value of property used in West Virginia, as compared with the value of property in all states, of foreign corporations; and (3) liquor and other licenses.

West Virginia went into the dry column in 1914. Faced with the loss of revenue from the liquor business, the 1913 legislature had before it two revenue bills of importance: one imposing a production tax on oil and gas, equivalent to two cents per barrel of oil and one-half cent per thousand cubic feet of gas; the other levying a transportation tax of two cents per barrel of oil and three-eighths of a cent per thousand cubic feet of gas, but exempting oil and gas transported in lines under twenty miles in length.

Our state being blessed with an annual production of oil in the neighborhood of eleven million five hundred barrels and two hundred and fifty billion cubic feet of gas, there had been an ever-growing demand on the part of the public that a special tax should be placed on these productions, inasmuch as large quantities of oil and gas were being transported out of the state and so rapidly as to cause grave concern on the part of those who foresaw the early exhaustion of this natural wealth and believed that with the coming exhaustion of lumber and the steady depletion of coal deposits, the state should encourage agriculture by carrying out an extensive good roads program, with funds derived from the levy of an additional tax on oil and gas. It was further urged by the proponents of the bills that the policy of the state should be to keep for use within the state as much gas as possible, to insure not only an ample supply of this cheap fuel for domestic purposes but to attract manufacturers to the state.

Both bills were vigorously opposed and both were defeated. Producers argued (1) that the board of public works, whose duty it was to assess persons and corporations operating pipe lines in the state, in arriving at the true and actual value of property, took into consideration not only the physical property, but also the earnings, and the par, and, where obtainable, the market value of the capital stock and outstanding bonds, and that the valuations placed upon the properties by the board included not only the value of the physical property but the value of franchise as well, and, therefore, that the bills constituted in effect "double" taxation; (2) it was argued that the clause in our constitution—Article 10, Section 1—

"The Legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations,"

relied upon by those favoring the passage of the bills, would be violated, in that the bills singled out a few taxpayers and were therefore discriminatory; (3) that the argument that there was a just basis for levying a special tax upon oil and gas, upon the ground that their production was exhausting the state's wealth, involved a fallacy; that the oil and gas deposits were not owned by the state, that such deposits were private property, and their transportation beyond the boundaries of the state should be as free as the transportation of cattle, coal or any other of the products of the state; and (4) that any such tax placed upon the producers of the state meant only an increase of rates to domestic consumers, who after all, would bear the burden.

Those opposed to the transportation tax bill, in addition to the arguments used by the producers, made serious objection on account of the fact that in practice the tax would be paid by some fifteen or twenty corporations, and that it was unfair and discriminatory to exempt lines under twenty miles in length.

At the 1915 session of the legislature a bill imposing an excise tax equivalent to one-half of one per cent on corporate net income earned from business transacted and capital invested in West Virginia was passed. At a subsequent session this rate was increased to three-fourths of one per cent. The revenue derived from this act varied with business conditions; in 1916, the amount derived was \$322,000; in 1917, \$500,000; in 1918, \$1,300,000; in 1919, \$700,000, and so on.

In 1919, the legislature being required to provide more revenue, an act was passed imposing a privilege tax on pipe lines equivalent to two cents per barrel of oil and one-third of a cent per thousand cubic feet of gas transported into, or through, the state, regardless of origin or destination. This tax law was calculated to raise about \$1,500,000, but the revenue to be derived from the law, if

there is any collectible, will be very small in comparison with the amount expected, since the West Virginia circuit and supreme courts have held that the measure of the tax, to avoid the burdening of interstate commerce, must be limited to oil and gas in intrastate business only. An appeal is now before the United States Supreme Court and hearing has been set for December next.

Owing to the failure of the pipe-line privilege tax, and the fluctuation of the excise tax on corporate net income, occasioned by changes in business conditions from year to year, deductions from gross income of heavy federal taxes, the disadvantage of having to deal with excessive charges against gross income on account of salaries, depreciation and depletion, and the fact that the state had to have a much larger and more regular revenue, and since much doubt existed as to whether, under our constitution, a law which would in effect require the payment by individuals and firms, as well as corporations, of a tax on net income, would be sustained by the courts, the 1921 legislature repealed the excise tax on corporate net income and the pipe-line privilege tax and substituted therefor the business-profession tax law, to take effect July 1, 1921.

#### THE WEST VIRGINIA BUSINESS-PROFESSION TAX LAW

The business-profession tax law is designed to reach and affect every person, firm, co-partnership, association and corporation engaged in business in the State of West Virginia, doing over \$10,000 business in the state, as expressed by the amount of their gross sales, or gross income, with one important deduction from sales in the case of the wholesaler, to which I shall refer later.

It will also affect those engaged in the practice of professions in West Virginia whose gross income exceeds \$10,000 annually.

The tax is levied for the privilege of engaging in any business or professional activity in the state. Business activities are classed as follows, each class being entitled to a specific deduction of \$10,000 from sales proceeds or gross income, before the computation of tax:

(1) The mining and production in West Virginia of minerals, the measure of the tax being  $\frac{3}{8}$  of 1% of the value of the output as shown by the sales proceeds.

(2) Manufacturing in West Virginia, the measure of the tax being  $\frac{1}{8}$  of 1% of the value of the goods manufactured as shown by the sales proceeds.

(3) Selling tangible property, other than at wholesale, the measure of the tax being  $\frac{1}{8}$  of 1% of proceeds of sales made in West Virginia.

(4) Selling tangible property at wholesale, the measure of tax being  $\frac{1}{8}$  of 1% of sales proceeds, after deducting purchase price, on sales in West Virginia.

(5) Banks and public utilities, the measure of tax being  $\frac{1}{2}$  of 1% on intrastate gross income.

(6) All other business and professions, the measure of the tax being  $\frac{1}{2}$  of 1% on gross income.

From this you will observe that while the subject of the tax is the privilege of engaging in business or professional activity in West Virginia, the measure of the tax in every instance is the sales proceeds, from which the wholesaler or jobber may deduct the purchase price of the goods sold. This is quite a valuable feature of our law, as applied to (1) miners and producers and (2) manufacturers, in that it entirely removes objections raised to taxing sales in other states of West Virginia products. It will be noted that the sale is not taxed, but the business or professional activity is taxed, and we can find no more equitable method of applying the tax in proportion to the taxpayer's ability and liability to pay, than to use his volume of business as shown by his sales. This classification of activities, while adding somewhat to the complexity of administration, will by no means be difficult. The returns will show, for instance, coal companies engaged in several activities, such as coal mining, manufacturing coke, selling goods at retail, renting tenement houses and leasing coal lands on a royalty basis, on all of which activities they pay either a different rate of tax or the tax is assessed on a different basis, except that the renting of houses and leasing of coal lands will be combined in one schedule.

The tax for the privilege of mining and producing minerals in West Virginia and for the privilege of manufacturing in West Virginia, is measured by the gross value of the products, as determined by the gross proceeds derived from the sale thereof, regardless of point of delivery.

But as to the privilege *to sell* tangible property, our law avoids any interference with interstate commerce by exempting from the measure of the tax the proceeds of sales of articles, substances or commodities for continuous transportation and delivery outside of West Virginia, in commerce between West Virginia and other states of the United States, or between West Virginia and foreign countries, and also the sales of importations from any foreign country or from any other state of the United States, when sold in the original package before being commingled with the mass of property in West Virginia. The exact moment the original package loses its foreign nature and becomes a naturalized West Virginian commodity subject to tax, is a question that is at present, it seems, not well settled. I am of the opinion, however, that this is a matter of no great importance.

Another feature of the law in connection with the tax for the privilege to sell is the difference between the measure of tax as

applied to wholesalers and jobbers, and retailers. As to wholesalers and jobbers, the law exempts them from paying the normal rate of tax on that part of their sales proceeds represented by the purchase price of the goods sold, but increases the rate from twenty cents on the hundred dollars to thirty-three and one-third cents. The effect is practically to tax their gross profits as opposed to the retailer's gross sales. It was felt that the increase in value between the sales price of the commodity before reaching the jobber's hands, and after, was not enough to warrant the same rate of tax as applied to the retail price. It would probably have been better if, instead of changing the measure of the tax for wholesalers and jobbers, that the rate of, say, one-tenth or one-twelfth of one per cent had been applied to their gross sales; but in the course of a year's time it can be definitely ascertained whether the legislature erred in its effort to equalize so as to discriminate in favor of the wholesaler. If so, the next session of the legislature may be relied upon to enact a satisfactory amendment.

In many instances retail and wholesale activities will exist together. Since in the case of retail sales the tax is levied on the gross sales proceeds, no inventory is necessary. The wholesalers, however, may in the beginning have a little trouble in ascertaining the cost of the goods purchased. A solution in the latter case will be found in most instances in estimated profits being used to determine the cost of goods sold, based on percentages that will at least be fair to the state if not entirely accurate.

In recognition of the fact that there had long been a feeling on the part of the people of West Virginia that a production tax of some kind should be levied on those privileged under the protection of our laws to separate from the soil and rocks of the state those valuable minerals that have been so bountifully distributed by nature over practically the entire length and breadth of our mountains and valleys, the normal rate of one-fifth of one per cent on gross sales was doubled as to producers of coal, oil, natural gas, limestone, sand and other mineral products. While appreciating to the full the value of that spirit of enterprise that has opened up our remote hillsides and sent forth to all parts of the country, and indeed, in the case of coal and oil, to all parts of the world, West Virginia's mineral resources, yet public sentiment, as I have already indicated, had reached the point where it was felt that these industries should bear some extra tax, however small. For this reason a small privilege tax, amounting to forty cents on the hundred dollars of production, was levied. As the tax falls on the sales value of the minerals, there is undeniably implied in the statute the selling of the coal, oil, etc., as well as their mining and production. So that while it may seem a discrimination against the mining industry that the normal tax was doubled, yet

when we consider the mining and again the selling activity as sharing the burden of the tax falling on the miner and producer of minerals, and the depletion of natural resources that the industry involves, it must be admitted that the tax is not only not discriminatory, but that it imposes but a negligible levy on the mining and oil and gas industries, especially when we consider institutions such as miners' hospitals, state constabulary, and the large inspection forces needed to enforce the laws for the protection of life and limb that are for the direct and peculiar benefit of the industry. Stocks of coal, oil, gas and other minerals on hand June 30th, 1921, will be liable under the tax law for the sale of tangible property, if sold within West Virginia, and this will be the only instance when the producer will be required to pay a sales tax on his products. This will also apply to manufactured products. It will be observed that the mining and manufacturing activity is in this case antecedent to the operation of the statute, whilst the selling activity is not.

The sales tax in Canada, with numerous exemptions applied to the necessities of life, and only taking wholesale transactions within its scope, has already proved to be a success, after about two years' experience.

Our law reaches and affects a large number of taxpayers which, in my opinion, is conducive to good government in that a wider interest will be taken along lines of progress, economy and efficiency. The return forms are not complicated and the returns are easily prepared. The provisions of the law are designed to make the sales tax operate as equitably as possible as between the different classes of taxpayers. The \$10,000 exemption allowed to all, before the tax starts to operate, is exceedingly liberal. Altogether, it should prove a popular measure if such a term is possible as applied to taxation. The revenue to be derived from the operation of the law, when the bill was before the legislature, was variously estimated, the estimates ranging from three and one-half to seven millions.

I hope I shall have the pleasure at some future date, after administrative experience with the new law, which is at present lacking, of outlining in full the interesting features that will naturally appear.

CHAIRMAN HOWE: This paper has been an exceedingly interesting one and the subject is so vitally different from anything that we have ever had or thought that we should have—the idea of a state having a gross sales tax—that I feel that we might devote perhaps ten minutes to a discussion of it. Each member who discusses it will have to be very brief. We will devote ten minutes to discussing it now if there are those who desire to do so.



OSCAR LESER of Maryland: Mr. Chairman, the first thing that struck me about the speech was the modesty of the speaker in not telling where he came in. He made some mention of the ex-officio board that was to administer one of the measures, but we were not told exactly the function of the state tax commissioner. There was an allusion also in his remarks to the exception of goods sold in the original package, intended of course to meet the decision of the supreme court on that subject. I wondered whether they knew the farther or made the farther distinction that the goods, in order to be exempt from state taxation, should not only be in the original package but in the original package in the hands of the original importer. Both conditions must concur in order to exempt the goods from local taxation. The general scheme of a sales tax has been applied in Pennsylvania for possibly thirty or forty years. It is called there the mercantile license tax, and makes the same distinction, in fact a further distinction, in regard to wholesalers and retailers, as the West Virginia act. Roughly, it provides for a tax of one dollar per thousand on sales of retailers, fifty cents per thousand on sales by wholesalers, and twenty-five cents per thousand on sales on the exchanges, each time the difference in rate being roughly graded according to the smaller margin of profit, as you get into the larger transactions. I think that my own judgment would be that the proper way to make the distinction between these different classes is not by such an arbitrary thing as deducting the purchase price in one case, but rather by an adjustment according to the rate. Finally, I merely wanted to ask a question, which was whether the ten thousand dollar exemption applied to every person, or whether the law simply provided that where the total sales were under ten thousand dollars there should be no tax.

WALTER S. HALLANAN: I might answer that by saying that the exemption is general, and where the gross sales for the year are less than ten thousand dollars, our rules do not require the filing of any return, but the instruction is given that anyone engaged in business or in any professional activity in the state must keep his books in such shape that they may be open at any time to inspection, if there is a suspicion of evasion.

THOMAS E. LYONS of Wisconsin: I want to inquire of the gentleman, first whether the sales tax that you speak of applies to wages and salaries at all.

MR. HALLANAN: No, it does not.

MR. LYONS: Does it apply to the isolated sales of capital assets, a man selling a farm or one who sells his property?

MR. HALLANAN: In general every sale in excess of ten thousand dollars is taxable.

MR. LYONS: So that if a merchant sells out his entire business, stock of goods, he is subject to the tax; the same would be true of the farmer?

MR. HALLANAN: In the amount over the ten thousand dollars.

MR. LYONS: Yes, subject to the ten thousand dollar exemption. Finally, your law implies a sale within the state, as I understand you?

MR. HALLANAN: Yes.

MR. LYONS: Suppose a manufacturer or producer establishes an independent selling agency outside of the state, can you reach him?

MR. HALLANAN: That would depend upon where the sale took place.

MR. LYONS: Well, outside of the state.

MR. HALLANAN: If a manufacturer carried on his books a sale to his independent agency at a certain arbitrary figure, then he would be taxable in that amount he carried on his books.

MR. LYONS: Take the case of a branch, instead of an independent agency, outside of the state. He maintains a branch outside of the state and merely ships goods outside of the state to this branch; the sale is made from the branch house.

MR. HALLANAN: That would not be taxable.

MR. LYONS: Rather an easy way to evade the tax, isn't it?

MR. HALLANAN: We do not anticipate that there will be a great deal of that.

FRANK ROBERSON of Mississippi: I merely want to ask if this sales tax is for state purposes alone and if it has any reference to the county or city.

MR. HALLANAN: It is revenue for the state alone.

MR. ROBERSON: And how is it operated through your state officers? Do they make the inquiries?

MR. HALLANAN: The returns are made to the state tax commissioner. Where there is a gross business in excess of sixty thousand dollars a year our rules require the filing of a quarterly return, and where the gross sales are less than sixty thousand dollars the rules require only an annual return at the end of the year, upon which the person or corporation closed their books. It may determine upon what year it shall make its return.

MR. LYONS: Does your constitutional uniform clause provide for privileges?

MR. HALLANAN: Yes.

MR. LYONS: Is there no question about imposing upon mining, for the privilege of doing business, the double rate which you impose upon merchants and manufacturers?

MR. HALLANAN: I think not. The general construction given to it is that they have two distinct privileges; first, the privilege of production, secondly, the privilege of sale. I should like to say that the law is in general acceptable to those engaged in the transfer of the resources of the state; they have no complaint to make in respect to it.

WILLIAM P. WHITE: I might suggest that the State of Delaware has a similar law, and if there be anyone here from Delaware perhaps he might give us some points on the law there. I know the member of our tax committee who comes from Delaware speaks of the revenue that has been raised through this means, which is of no particular burden to the taxpayer, and has been very satisfactory in the production of revenue. I should like to say, however, as a precedent to the establishment of such a system, that the state might well require of those who are engaged in business, a license, which might or might not require a fee—nominal fee at any rate—so that the tax commissioner may know by whom returns should be filed, and a statement might be made as to the quantity of sales, whether less or greater than ten thousand, so as to not permit the evasion of the tax.

J. G. ARMSON of Minnesota: I should like to ask the gentleman a question; upon what theory is the jobber or wholesaler permitted to deduct the cost of his goods, while the retailer pays on gross sales—what is the theory?

MR. HALLANAN: On the theory that the wholesaler does his large body of business on a much less percentage of profit than is the case with the retailer. It was felt that it would be practically confiscatory to levy a tax the way it was originally suggested. It was one-half of one per cent on the gross, and a great many wholesalers were able to produce figures that they were doing business on a profit of less than that, and by reason of the fact that the wholesalers of the State of West Virginia were engaged in competition with the wholesalers of the adjoining states, where no tax of this sort was imposed; it was an effort to relieve them of any handicap in that respect.

MR. ARMSON: In effect, then, as I understand you, the tax on

the wholesaler and jobber is the tax on his gross income rather than the sales, measured by the difference between what he pays and what he receives for his goods.

MR. HALLANAN: Without any deduction, as I attempted to make clear, for losses or for expenses. He is merely permitted to charge off the cost of the goods at the purchase price; and is taxed one-third of one per cent, as against one-fifth of one per cent applied to the retailer, on the basis of his gross sales.

MR. LYONS: Is there not substantially the same disparity in profits measured by sales between different lines; for example, a grocer notoriously sells on close margins, and therefore his tax would be comparatively high. A jeweler—it may not be a handy illustration—makes less sales but has a larger margin of profit. Is there not substantially the same disparity between the jeweler and grocer as between the wholesaler and retailer?

MR. HALLANAN: I don't think so, Mr. Lyons. There are certain elements entering into that which make an equitable adjustment.

MR. LYONS: It is true, is it not, that there is a very wide difference in the margin of profit in different lines of business in proportion to sales?

MR. HALLANAN: That is probably true.

MR. LYONS: And if so, you tax the one who makes few sales with large turnover more heavily than the other.

MR. HALLANAN: On the theory, of course, that his profit is worth more than the profit of the man who makes less sales.

C. P. LINK of Colorado: Mr. Hallanan, do you have any apprehension as to the prejudice to your local business by the tax as compared with outside mail-order houses, etc.?

MR. HALLANAN: No, I think that can be absorbed without any difficulty, or without any serious detriment to the business of the state.

MR. LINK: In your judgment, so far, would it not be preferable, if it were possible, for your state to adopt a well-founded income tax—wouldn't that be preferable to a sales tax?

MR. HALLANAN: I don't think that our constitution would permit an income tax.

MR. LINK: I say, if it were possible.

MR. HALLANAN: I might add further that I don't think our people would be willing to amend the constitution so as to permit it.

HUGH SATTERLEE of New York: This is very interesting to me because it brings up some general questions of sales taxation, but in reference to what was said by Mr. Lyons, as to the difference of treatment resulting from the fact that jewelers sell on a different basis of profit than grocers, for example, which is compared with the different kind of treatment accorded wholesalers and jobbers, it seems to me that this point is very well brought out, that where there is a real outside competition to be feared, as in the case of wholesalers and jobbers, why then there must be some different treatment. In other words, where retailers could very readily buy from wholesalers and jobbers outside of the state, at a price lower than from the wholesalers and jobbers within the state, because the wholesalers and jobbers within the state had to assume considerable tax, there is a real difference which would result in discrimination. But in the case of retailers, the tax rate is so small that as Mr. Hallanan has said, there is no substantial risk that people will go outside of the state or will make greater use of the mail-order houses than they would of retailers within the state. In other words, it simply brings out the point that where a sales tax is at so low a rate that it is not really worth people's while to go to any great trouble and expense to buy from other sources to evade the tax, they are not going to do it.

This West Virginia experiment strikes me as being highly interesting and instructive as bearing upon the practicability of a general sales tax throughout the United States. It is obvious that this sales tax in the case of retailers, for example, will almost undoubtedly in a very large measure be passed along to the consumer, and in the case of manufacturers it will also; although it has the disadvantage, as compared with a nation-wide tax, for example, that it is imposed only upon the people of the State of West Virginia, and therefore, if the difference in the tax made any great difference it would result in a serious discrimination against West Virginia purchasers; but apparently that was contemplated by the people of the state, who did not consider it much of a danger.

MR. HALLANAN: The question of the burden of this tax is one that I think merits very worthy consideration. We feel in West Virginia that the beauty of the sales tax is the utter simplicity of it. A man will not be forced to employ an expert accountant at the end of the year to make out his return, figure what his depreciation charge is, what his depletion charge is, and the various other elements of deduction. For illustration, to show that there will be no burden upon any class of business, a man in the retail

grocery business who does one hundred thousand dollars of business this year will pay a tax of one hundred and eighty dollars to the state. That is less in a great many instances than he would be required to pay for the making up of his return on the other principle. The first ten thousand dollars is exempt; he pays a rate of one-fifth of one per cent upon ninety thousand dollars, or \$180. Now, the average taxpayer will feel—and this is our experience in West Virginia so far as we have gone—that he is getting off in the easiest possibly way, because he don't have to bother with complicated returns. The average man in business, or engaged in the practice of a profession, knows at the end of the year how much business he has done. Our returns are simple; our forms are of such character that they can be made out by any intelligent person. He sends in his return with one blank—one line of the blank filled out saying he is engaged in a certain form of business, under a certain classification of our law; that he is entitled to ten thousand dollars exemption, and that his rate of one-fifth of one per cent applies against so much, and he can compute his tax right there. Under this situation we feel that the question of undue burden or undue discrimination against any class of business cannot prevail.

SECRETARY HOLCOMB: Have any rough estimates been made of the possible yield?

MR. HALLANAN: As I said in my address, Mr. Holcomb, we estimate a yield of from four to six million dollars a year.

CHAIRMAN HOWE: We shall have to be very brief to get through.

H. S. VAN ALSTINE of Iowa: Does this sales tax apply to manufacturers' sales and to sales of farm products from the farm?

MR. HALLANAN: Yes, it applies to all sales; no exemption at all, except the general exemption of ten thousand dollars.

GEORGE LORD of Michigan: I should like to ask the gentleman from West Virginia whether the primary object of the tax is to raise more revenue for the state to spend or whether it is a substitute for a tax now imposed, or whether it is designed to bring about a more equitable distribution of the tax burden in your state.

MR. HALLANAN: I might answer that by saying that it is for both purposes; first to be a substitute for the excise tax on corporations, which was based on the net income, and which raised only a revenue that was fluctuating from year to year and was not even dependent; secondly, it was to take care of the additional burdens of state government.

MR. LORD: What will be the net increase in your revenue in the state?

MR. HALLANAN: I gave figures a few moments ago to show that the income from the excise tax had varied from one-half million to one and one-half million yearly, as bad and good business years come. We take it that this tax will raise from four to six million dollars yearly, which will give us a net gain of from two and one-half to three million dollars per year.

MR. LORD: How near will that come to paying the total expenses of your state government?

MR. HALLANAN: We raise from our general property tax and from the charter tax about the same amount. In other words, the gross sales tax for state purposes will raise approximately one-half of the state revenue.

MR. LORD: One other question; you spoke of a production tax on minerals. In imposing that tax do you take into consideration the cost of production?

MR. HALLANAN: Yes, that is taken into consideration; the tax is based upon the sales of the product; in other words, if a purchaser of coal sells ten thousand tons of coal at two and one-half dollars a ton, he pays two-fifths of one per cent of twenty-five thousand dollars.

MR. LORD: I know; but in a great many of the mines there is a large difference in the actual cost of mining. We have mines in Michigan where it costs about one-half what others cost.

MR. HALLANAN: That is not taken into consideration under this principle. Every ton of coal that is produced is taxed on the basis of what it sells for.

MR. LORD: Then it really is a flat tax on production.

MR. HALLANAN: It is a flat tax on production; in other words, it is a production tax; it establishes that principle in our state.

MR. LORD: We should not want a tax like that in Michigan.

MR. S. S. KALISHER of Pennsylvania: They no doubt know it costs more to produce in some places than it does in others. The law, as I understand it, disregards the general principles of taxation, that is, the ability to pay. That is true, is it not?

MR. HALLANAN: Oil a year ago was selling for six dollars and ten cents or six dollars and twenty cents a barrel, as I recall. The tax then would have been based upon that price. Today we

take into consideration your ability to pay two-fifths of one per cent on but two dollars and fifty cents.

MR. LYONS: Supposing you have large sales and still make a loss?

MR. HALLANAN: That is true today and has been for many months.

MR. SATTERLEE: It always amuses me to hear "ability to pay" brought out. How about the general property tax; is that based on the ability to pay?

CHAIRMAN HOWE: I think we have gone about as far as we can with this, due to the fact that we have a program here. We will continue the program, and if there is any time at the end of the program for further discussion of this subject, we will again revert to the subject and further discuss it, but if there is not we shall have to be satisfied with the discussion we have had of it.

The next discussion is by William E. Hannan, legislative reference librarian of the New York state library. Mr. Hannan is unable to be with us, and Mr. Holcomb will read his paper. After that, the discussion will go on in the same way that this has been, and Mr. Holcomb requests that you make notes as you go along, of the new legislation, for discussion afterwards.

SECRETARY HOLCOMB: Mr. Chairman and gentlemen: The secretary is somewhat embarrassed at intruding himself so often upon the session, but the program this year is quite different from any other program we have ever had. It requires more or less contact with the secretary. The gentlemen who kindly consented to address us have generally only served to lead us in our discussions, and they have not felt the necessity of surely being here as they would had they had definite papers. I had intended to indicate some of the high spots for this session by introducing Mr. Hannan's address, thinking that by that means the gentlemen would possibly make notes, as the paper proceeded, of matters that seemed to raise questions in their minds. So that if you think of anything, as I read this very hastily, that you want to ask, that would be a good way to raise questions. We have all sorts of talent here, so that those who have not been able to attend will not be missed through any lack of participation. They were asked to make remarks on special topics in their states, but those topics that you will hear in this summary will indicate to you some questions, possibly, and I think we may develop an interesting discussion.

I feel indebted very greatly to Mr. Hannan; I feel that we owe him a good deal of thanks for his voluminous paper, which



will appear in the printed volume. This summary merely touches the high spots. I felt that it was worth while to give you a sketch of the general survey of what has happened in the last year or two. Unless the others think otherwise, I shall proceed with this briefly. Mr. Hannan is legislative reference librarian of New York and has a very elaborate office equipment to inform the legislators of his state of the various kinds of legislation that come up.

Secretary Holcomb reads summary of William E. Hannan's paper, the complete paper being as follows:

### REVIEW OF TAX LEGISLATION IN THE VARIOUS STATES FOR 1921

WM. E. HANNAN

Legislative Reference Librarian, New York State Library

During the last year the most interesting developments in the field of state taxation, with few exceptions, have been constitutional. This is true both for the negative as well as the positive accomplishments. In 1920 the voters of twelve states, all of which states are of the west and south, with the exception of Maine and New Hampshire, voted upon 26 constitutional amendments relating to subjects dealing with taxation or finance. Of the 26 amendments, 18 were adopted and 8 defeated. During the years 1922-1923 eleven constitutional amendments relating to taxation will be voted upon in seven states.

#### CONSTITUTIONAL AMENDMENTS ON TAXATION ADOPTED, 1920

Twelve states in 1920 voted upon proposed changes in the revenue sections of their constitutions. These states and the amendments are as follows:

##### CALIFORNIA

California voted upon four constitutional changes, two of the amendments having been proposed by legislative action and two by initiative measures. Two of the amendments were adopted and two were defeated. The more important of the two which were accepted relates to the alien poll tax. It was adopted by the overwhelming vote of 667,924 for, to 147,212 against. The amendment provides for an alien poll tax of not less than \$4.00 on every alien male inhabitant of the state over 21 years of age and under 60 years, except certain defectives, the tax received to be paid into the county school fund in county where collected. The legislature this year, in harmony with this constitutional provision, enacted a law providing that such alien male inhabitants shall pay

an annual poll tax of \$10. A penalty of 50 per cent is provided for the non-payment of the poll tax and provision made, in case the tax and penalty is not paid, for the seizure of the personal property owned by the delinquent and the sale of such property after three hours' verbal notice of time and place; also, all debts owing to such delinquent, including wages, are made subject to garnishment and seizure. The collection of this poll tax is placed in the hands of the assessor who is authorized to employ extra field deputies, one for each 1000 aliens residing within the county. The second amendment adopted adds a new section to the constitution which exempts orphanages from taxation. This amendment was carried by a vote of 394,014 for, to 371,658 against.

#### COLORADO

Colorado adopted an amendment which was proposed by an initiative petition, which increases the limit of the state levy from four to five mills, the extra mill to be used for the erection of additional buildings to be used by the state educational institutions.

#### MISSISSIPPI

The voters of Mississippi in 1920 adopted an amendment relating to laying a poll tax on women.

#### MISSOURI

Missouri adopted the following constitutional changes:

1. Authorizing cities of 75,000 inhabitants or more to acquire and pay for waterworks, gas and electric light plants, street railway, telegraph and telephone systems.
2. Authorizing cities of 30,000 inhabitants or more to incur additional indebtedness for the purchase or construction of waterworks, ice plants and lighting plants.
3. Requiring county courts to levy an additional road tax of fifty cents on the \$100 valuation of any road district, if a majority vote so declares.
4. Providing for the levy of an annual tax of not less than one-half of one cent nor more than three cents on each \$100 valuation of taxable property for the raising of a fund for the education of the deserving blind.
5. Providing for a bond issue of \$1,000,000 for a soldiers' settlement fund and the levy of a tax of one cent on each \$100 valuation of taxable property. The object of this amendment is to provide employment and rural homes for honorably discharged soldiers, sailors and marines of the state who have served in any of the wars of the United States.
6. Authorizing the issue of road bonds in the sum of \$60,000,000 and the laying of a direct annual tax to care for the interest and principal. Provision is also made for the appropriation of a certain part of the motor vehicle fees and taxes, to be applied in payment of the principal of the bonds.

7. A further amendment to be voted upon at a special election in August authorizes the interest on these road bonds to be paid from motor vehicle fees and licenses.

#### NEBRASKA

Nebraska's new constitution adopted September, 1920, provides that "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law." This provision is a great improvement upon the old revenue section adopted in 1875. In the section dealing with exemptions, the only new provision is in the exemption from taxation of "household goods to the value of \$200 to each family".

#### NORTH CAROLINA

North Carolina adopted four amendments, the most important of which relates to the income tax. The old provision stated "that no income shall be taxed when the property from which the income is derived is taxed". This provision limited the income tax to income from salaries, wages and fees. The new amendment removes this provision and definitely provides for a tax on incomes derived from all sources of not to exceed six per cent and with exemptions of not less than \$2,000 for a married man or a widow or widower having minor children and for all other persons \$1,000.

Another amendment provides that the poll tax for state purposes shall not exceed \$2 and for cities and towns \$1.

A further amendment reduces the rate of tax for state and county purposes from 66⅔ cents to a limit of 15 cents on each \$100 valuation of taxable property.

A still further amendment abolishes payment of the required poll tax as a qualification for voting.

#### VIRGINIA

Virginia adopted two amendments, one of which prohibits school districts from exceeding the levy fixed by law for the raising of additional sums for school purposes. The other permits the state to contract debts for the purpose of constructing or reconstructing public roads.

#### CONSTITUTIONAL AMENDMENTS ON TAXATION DEFEATED, 1920.

#### CALIFORNIA

Of the two measures defeated in California, both were initiated by petition and both were important. One related to the levy and collection of an ad valorem tax for state university purposes of 2/10 mills per dollar on taxable property. Though the amendment

was of the greatest importance to the future financial welfare of the university, it was defeated. The vote was 380,027 for, to 384,667 against. The other initiative measure related to the single tax principle. It proposed that, beginning January 1, 1921, there shall be exempted from taxation personal property, planted trees, vines and crops; improvements appertaining to land being taxed at not exceeding preceding year's amount until exempted January 1, 1923; other county, municipal and district revenues to be collected from land values. Beginning January 1, 1924, it would require all public revenues to be raised by taxing land values exclusive of improvements. War veteran, church and college exemptions and privately owned utilities using highways were to be unaffected. This measure went down to defeat. The vote was 196,694 for, to 563,503 against.

## MAINE

Provision for an income tax was defeated at the September election in 1920 by a vote of 53,975 for, to 64,787 against.

## MINNESOTA

An amendment which proposed to tax incomes and exempt certain real and personal property was defeated. It is quite evident that the incorporation of the income tax provision with the one relating to the exemption of certain personal property from taxation defeated the amendment, as the exemption provision was reasonable in itself.

## MONTANA

Montana voters defeated a constitutional amendment which proposed to substitute a tax commission of three members in place of the state board of equalization, and to "classify property for the purpose of taxation and provide the per centum of value of each class as the basis for taxation where a classification has not been made."

## NEW HAMPSHIRE

For the second time the voters rejected the income tax amendment which authorized the legislature to impose a tax "upon incomes from whatever source derived, which taxes may be graduated and progressive, with reasonable exemptions." The amendment providing a graduated inheritance tax was also defeated for the second time. Both of these amendments were rejected in 1920.

## OREGON

The single tax amendment which the Oregon Single Tax League had proposed by initiative petition was decisively defeated. This amendment proposed as follows:

"To assess all taxes necessary for the maintenance of state, county, municipal and district government upon the value of

the land itself irrespective of the improvements in or on it, and to exempt all other property and rights and privileges from taxation from July 1, 1921 to July 1, 1925; and thereafter to take the full rental value of the land, irrespective of improvements, as taxes, and no other taxes of any kind to be levied."

CONSTITUTIONAL AMENDMENTS ON TAXATION TO BE VOTED UPON,  
1921-1923

CALIFORNIA

The 1921 legislature passed three amendments, to be voted upon in 1922. One relates to the imposition of a tax in lieu of all other taxes and at a different rate, upon all notes, debentures, shares of capital stock, bonds or mortgages not exempt from taxation; the second amendment includes those released from active duty under honorable conditions in the class of veterans whose property to the value of \$1,000 is exempt from taxation; a third amendment proposes a material increase in the rate of tax on public utilities and certain corporations.

INDIANA

Three vital amendments to the constitution submitted at a special election September 6, 1921, were defeated. One would give the governor the power to approve or disapprove any item in any appropriation bill; a further amendment stated that "the general assembly shall provide by law for a system of taxation". If adopted, all restrictions on the power of the legislature over taxation would be removed. It would appear that the adoption of this second amendment would permit the imposition of an income tax; however, in spite of this fact, a further amendment was proposed relating to the "levy and collection of taxes on incomes from whatever source derived".

MICHIGAN

An income tax amendment passed a special legislative session this year, to be voted upon in 1922. It provides "for a tax of not to exceed four per cent upon net gains, profits and incomes from whatever source derived, which tax may be graduated and progressive," and classification of property, persons, firms and corporations is permitted. The state tax commission opposed the limitation of the tax to "four per cent" and the insertion of the word "net" before "gains, profits and incomes".

MINNESOTA

An amendment will be voted upon in 1922 providing for an annual occupation tax, in addition to all other taxes, on all ores mined by any person or corporation; fifty per cent of tax to go to the state, forty per cent to the permanent school fund and ten per cent to the permanent university fund.

## MISSOURI

This state will vote upon a veteran bonus amendment in 1922 which calls for a bond issue and a direct annual tax to care for the principal and interest.

## MONTANA

The 1921 legislature proposed an amendment, to be voted upon in 1922, providing for a state board of equalization, with the powers and duties of a tax commission. An amendment in 1920 to this same section of the constitution sought to create a state tax commission and to provide for the classification of property for tax purposes, but it was defeated by the voters.

## OKLAHOMA

An amendment to be voted upon in 1922 proposes to increase the rate of levy for all purposes in the state from 31½ mills to 41½ mills. The sole beneficiary is the local school district which receives the added ten mills.

## PENNSYLVANIA

Two amendments passed the legislature this year but must again pass the session of 1923, before submission to the people. One of these would remove the specific names of certain military orders and insert organizations of honorably discharged soldiers, sailors and marines whose property may be exempt from taxation. The other amendment provides for the classification of property for the purpose of laying graded and progressive taxes.

## TENNESSEE

An amendment which passed this year and which will be voted upon in 1922 provides for a uniform tax on persons and property of the same class and for exemptions by general law. A further amendment passed, proposing an income tax upon incomes "from whatever source derived". This measure must pass another session before submission to the voters.

## UTAH

An important amendment passed this year will be voted upon in 1922. This measure empowers the legislature to classify all property for purposes of taxation, except mines or mining claims, and to impose graduated and progressive taxes upon incomes.

## STATE TAX COMMISSION

Twelve states, either through new measures or amendments to previous law, passed legislation relating to the state administration of the tax system. California enacted a new law requiring the state board of equalization to report to each legislature and to the governor the relative percentage of tax borne by corporations and

industries paying taxes to the state as compared to the percentage or rate of ad valorem tax borne by property locally taxed. Idaho, while she has a state board of equalization, created a bureau of budget and taxation in the office of the governor. The tax activities of this bureau are confined to a visit to each county at least once a year for the purpose of securing assessment data; to aid the state board of equalization; to submit an estimate of the values of all public service corporations to the state board; to investigate the tax laws of other states and to recommend changes to the governor. In addition to the foregoing the bureau shall investigate the work and efficiency of state departments and prepare plans for the coordination of departmental work.

Illinois provides that the tax commission shall consist of five members. Indiana made minor changes in the supervision by the state board of equalization of local assessments and the issuance of bonds. Nebraska in a new law authorizes the appointment of a single tax commissioner, term two years, salary \$5,000. He has jurisdiction over all revenue laws, subject, however, to review by the state board of equalization and assessment of which he is a member. New Mexico made a general revision of its revenue code but made no change in the form of the tax commission created in 1919, when a chief tax commissioner who devoted all his time to the work and two associate commissioners on but part time was established. This same arrangement is continued. The outstanding feature of the new law is that the tax commission is given original jurisdiction to assess and fix the values of all public utilities, banks, mines, oil and gas properties. It is to exercise general supervision over the administration of the assessment and tax laws, over boards of equalization and all officers having power of levy and assessment, and it is to confer with, assist, advise and direct such officers. The state tax commission is further charged with the approval of county budget estimates.

New York state is notable for the constructive character of its tax legislation this year. The outstanding feature is the consolidation of all state tax agencies in a single tax commission, composed of a president and two associate members. Formerly there were three taxing departments, the state tax commission, the state comptroller and the secretary of state. This reorganized commission will administer the following taxes: personal income tax; inheritance tax; stock transfer tax; license tax on motor vehicles and cycles; corporation taxes of every nature, including the income tax on business corporations. The commission will continue to assess special franchises and supervise the mortgage recording tax.

North Carolina also has taken advanced ground in the reorganization of its revenue system. The most important step appears to be the creation of a state department of revenue with a single

commissioner whose sole duty is the supervision of the revenue code. Formerly the corporation commission supervised the revenue code in addition to the regulation and supervision of railroads, public utilities and banks. There is also created a state board of equalization composed of the new commissioner of revenue, the chairman of the corporation commission and the attorney general. This board will hear and determine appeals.

Tennessee created two tax administrative agencies; a tax department, with a single tax commissioner and a state board of equalization of six members one of whom is the tax commissioner. The term of both the board and the commissioner is six years. The commissioner is given general supervision over the administration of the tax laws; fixes rules governing local tax officials; procures the assessment of all property at its actual cash value and administers the corporation tax law. The state board of equalization is given full power to investigate assessments. An evident weakness yet remains in the present revenue system of the state, namely the method of assessing public utilities. These are still subject to assessment by the railroad commission and to equalization by a separate board, consisting of the governor, secretary of state and state treasurer.

In Washington, under the new administrative code consolidating the various state departments, the tax commissioner becomes supervisor of the division of taxation in the department of taxation and examination. The tax commissioner of West Virginia is made eligible for reappointment and authorized to employ experts and appoint appraisers to aid in the valuation of taxable property. In Wyoming the chairman of the state board of equalization is authorized to call in December each year, a meeting of the county assessors and one member of the board of county commissioners, to meet with the state board to discuss matters relating to the tax laws.

#### SPECIAL TAX INVESTIGATION COMMISSIONS

Seven states authorize special commissions to make a study of taxation. California repealed the act of 1915 providing for an investigation and report upon taxation and appropriating \$75,000. Georgia provides for the appointment of a joint legislative committee to consider the question of changing the system of taxation from an ad valorem property tax, report to be made to the 1922 legislative session. Iowa will have a joint legislative committee of eight, four senators and four representatives, to study and report upon a revision of the tax laws. The committee is authorized to prepare such bills "as will provide adequate and fair means and methods of assessment and equalization, and place and distribute the burdens of direct taxation fairly and equitably." The committee may employ expert assistants.



New Jersey continues its special tax commission, created in 1919. Special work of the commission is to prepare bills to be submitted to the legislature in 1922 on the following;

1. The elimination from taxation of all personal property, including machinery, raw materials, stock on hand, investments and accounts.
2. A state income tax at a sliding scale, not to exceed six per cent, on all incomes in excess of \$1,000, using the same exemptions as the federal government, the tax to be collected by the state and distributed to the various communities in proportion to their final assessed valuations of realty.
3. A referendum as to the adoption or rejection of all such proposed legislation to the voters of New Jersey at the general election in 1922.

New York also continues its special commission to investigate the taxation of public service corporations and the special franchise tax.

Oregon is to have a committee of seven, appointed by the governor, to examine into the possibilities of new sources of revenue or new methods of taxation and formulate plans or suggestions to the governor for the use of the legislature in 1923. Utah authorizes the creation of a special commission of five citizens, to be appointed by the governor, one to be a member of the state board of equalization. The commission is to consider the policy or necessity of an income tax or of a classified property tax, or of such other system of taxation of property, real and personal, tangible and intangible, as in the judgment of the commission may secure a more equitable distribution of the burden of taxation and afford adequate revenues to the state. Report is to be made on or before January 1, 1923.

Washington appropriates \$20,000, to be used to secure data on taxation for the use of the next session of the legislature. The state is moved to make this investigation by reason of the fact that real and tangible personal property are now bearing the entire burden of taxation. The governor is authorized to employ expert assistants.

#### LOCAL TAX ADMINISTRATION

Massachusetts authorizes assessors of towns to appoint and remove citizens as assistant assessors. In cities, the mayor or assessors may appoint such assistant assessors. Michigan provides that the county board of supervisors in equalizing the assessments shall do so by estimating the true cash value of the real estate and personal property subject to assessment.

New Jersey, in a new law, provides for the removal of an assessor for neglect of duty, removal to be made by the state supreme

court, upon complaint of the state board of taxes and assessment. The assessor removed is not to be eligible to hold the office again for five years. New Mexico gives the county assessor increased allowance for assistants and expenses.

New York authorizes cities of the second and third class to provide for a department of assessment and taxation. Such cities may by ordinance abolish the office of assessor, if such office is not a part of the city charter. Pennsylvania authorizes boroughs, townships, school districts and poor districts to appeal from any assessment to the board of revision and to the courts. This law places such districts on the same level, with regard to appeals from assessments, as the individual assessed. A further law provides that in counties of the first class, which relates to Philadelphia, assessors may hereafter be appointed without regard to political party affiliations and provision for representation by minority political parties is eliminated. West Virginia removes the qualification of "being a freeholder in the county in order to hold the office of assessor" and simply requires the condition of residence.

#### EXEMPTION FROM TAXATION

Sixteen states materially amend the statutory provisions relating to tax-exempt property. Ten states make more liberal the provisions exempting the property of veterans or veterans' organizations.

Iowa increases the value of exempt property of veterans of Mexican and civil war from \$300 to \$3000; of war with Spain, Chinese relief or Philippine war from \$300 to \$1,800; and the property of veterans or nurses in the war with Germany is made exempt to the value of \$500. Maine includes "marines" as beneficiaries of the property-exempt clause and adds that property conveyed to any veteran for the purpose of obtaining exemption from taxation shall not be so exempt. Massachusetts increases the exempt value of the real and personal estate of veterans' organizations from \$50,000 to \$100,000.

New Hampshire changes the value of the exempt taxable property of veterans of civil war, Spanish-American war and Philippine war from \$3,000 to \$5,000; disabled veterans of the foregoing wars and of the world war may be exempt from paying a poll tax by the selectmen; the personal property and real estate owned and occupied by the G. A. R., United Spanish War Veterans or the American Legion is also exempt. New Jersey and North Carolina exempt buildings, real estate and personal property of all veterans' organizations. New York includes amongst the beneficiaries of the exemption law "dependent mothers" of any person receiving a pension, bonus or insurance.

Oregon by a new law exempts property of soldiers or sailors of the Mexican war, Indian war or Civil war, or their unmarried

widows, to the value of \$1,000. Vermont exempts the real estate and buildings owned by any post of the American Legion and increases the value of exemption of a veteran of the civil war or his widow from \$500 to \$1,000, when the entire estate does not exceed \$1,500. Wyoming exempts property to the value of \$2,000 of veterans of the Civil, Spanish-American and World War, their widows during widowhood and of nurses who served in the World War. This state also exempts such veterans from poll tax, except school polls.

A number of states seek to encourage agriculture, education, industry and transportation by lessening the burden of taxation. California exempts from taxation "date palms under eight years old, fruit and nut bearing trees under four years old and grape vines under three years old." Idaho by a very interesting but abstruse amendment seeks to exempt from taxation the property of electrical power and transmission companies used for furnishing power for pumping water on irrigated lands. Exemption is to benefit the consumer or user of the water except in the case where such water is sold or rented, in which event the property of the company is to be taxed to the extent that the water is sold or rented. The state board of equalization is to determine the amount of exemption due the company and reduce its taxes to that extent. The amount of the exemption shall equal the amount of taxes included in the rates of the company or utility. The amount of taxes which would have been due if the exemption had not been granted is to be credited upon the bill for power rendered to the consumer, in the proportion which the consumer's use of power bears to the whole amount of power furnished.

Indiana increases the exemption of real estate for manual and trade schools from 320 acres to 800 acres; also exempts certain municipal and other local government bonds, issued for certain improvements of public benefit; also bonds and notes of the state board of agriculture; real estate and personal property used by the Indiana national guard or other military organizations for armory purposes and real and personal property of organizations not for profit, which are organized to discover and prevent fires and save property. Massachusetts provides that no commutation or excise tax is to be assessed against any street railway or electric railroad company during 1922 and 1923. New Hampshire extends, to include the year 1923, an act passed in 1919 which exempts any street railway from taxation if during the year it has been unable to meet its operating expenses and fixed charges. Rhode Island relieves the United Electric Railways Company and the Newport Electric Corporation from the payment of all taxes, including the various municipal franchise taxes, except the state tax upon gross earnings of one per cent.

Nebraska makes a specific exemption of household goods of the

value of \$200 to each family. New York at the special session in September, 1920 authorized counties and municipalities to exempt from county or local taxes for ten years new dwelling houses commenced before April 1, 1922, and completed within two years. In order to validate an ordinance of New York City, passed in February, 1921, which exempted from taxation new dwellings for ten years, with a maximum exemption of \$100 for each room and not to exceed \$5,000 for a single family house or apartment of a multi-family house, the legislature passed an act permitting local authorities to limit the exemption of new dwellings.

North Dakota takes the unusual stand of reducing the tax exemption. On residences on city lots the value of the tax exemption is reduced from \$1,000 to \$500, and on the tools, implements or other equipment of a farmer, from \$1,000 to \$500. Oregon by a new law exempts all state or county bonds issued for construction or maintenance of public roads or bridges, the exemption not to apply to income received from any investment in such bonds. Rhode Island exempts the real and personal property of fraternal organizations the net income from which is used to build an asylum, home or school for the education and relief of indigent members, their wives, widows or orphans. Wisconsin, by an amendment, exempts personal ornaments and jewelry habitually worn, not to exceed in value \$750; the real property exemption of religious organizations used as a home for the feeble-minded is increased from 120 acres to 160 acres; a new law exempts not to exceed 40 acres nor less than 20 acres to any bona fide settler for agricultural purposes for three years, if such real estate, when acquired, is uncleared and unimproved.

#### INCOME TAX

Six states amend their income tax law. Massachusetts limits the additional deductions allowed in the case of business incomes to the proportion of business expenses which the taxable interest and dividends bear to the total interest and dividends and requires fiduciaries, for the purpose of the income tax, to make annual return of gains from the sale of intangible personal property. A new law provides for an extra tax upon the net income of certain corporations of three-quarters of one per cent. "Net income" is defined to be that income furnished the federal government and due prior to April 1st, 1921. No credit is allowed for any federal war or excess profits tax or other income taxes. Missouri at the special legislative session in August reduced the rate of tax on incomes from one and one-half per cent to one per cent.

New York passed several amendments to the personal income tax law but the most important relates to a method of computing gain or loss from the sale of property. This amendment provides as follows:

1. In ascertaining the gain or loss from the sale or exchange of any class of property "the basis shall be, in case of property acquired on or after January 1st, 1919, the cost or the inventory value, if inventory is made in accordance with the income tax article."

2. In case of property acquired prior to January 1st, 1919, and disposed of thereafter

(a) No profit shall be deemed to have been derived if either the cost or the fair market price or value on January 1 exceeds the value realized.

(b) No loss shall be deemed to have been sustained if either the cost or the fair market price or value on January 1, 1919, is less than the value realized.

(c) Where both the cost and the fair market price or value on January 1, 1919, are less than the value realized, the basis for computing profit shall be the cost or the fair market price or value on January 1, 1919, whichever is higher.

(d) Where both the cost and the fair market price or value on January 1, 1919, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on January 1, 1919, whichever is lower.

North Carolina, in harmony with the constitutional amendment, enacts a statutory income tax on both personal and corporate incomes. The rate of tax is, for corporate income, three per cent; for personal incomes a graduated tax of from one to three per cent, the maximum being three per cent on the excess over \$10,000. To single persons an exemption of \$1,000 is granted, to a married man with a wife living with him \$2,000, and in the case of a widow or widower with minor children \$2,000. The law also exempts the income of a citizen from an established business outside the state and taxes income of a non-resident received from an established business within the state. The law is administered by the state commissioner of revenue and the proceeds are for the use of the state.

North Dakota exempts from the income tax law, "interest upon the obligations of the state of North Dakota and its political subdivisions." Wisconsin provides that no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, unless the income from such property or business is subject to income tax. A new law exempts cooperative associations and other similar organizations from filing a state income tax return unless subject to an income tax. By a further amendment ten per cent, formerly fifteen per cent, is allowed as a deduction on account of gifts to religious, charitable, humane or scientific corporations.

## INHERITANCE TAX

Seventeen states make amendments to their inheritance tax law. California, in a complete revision of the 1917 inheritance tax law, provides a schedule of deductions to be used in determining the market value of the property transferred. The rates upon transfers to relationships of the first and second degree are materially amended. On amounts in excess of \$500,000 the maximum rate is for first degree relationship, twelve per cent, and for second degree, eighteen per cent. In the case of third degree relationship the maximum rate is twenty per cent upon the amounts in excess of \$200,000, and for fourth degree, twenty per cent upon amounts in excess of \$100,000. The former maximum rates varied according to degrees of relationship. For first degree, fifteen per cent upon amounts in excess of \$1,000,000; second degree twenty-five per cent in excess of \$1,000,000; third degree, thirty per cent in excess of \$1,000,000; fourth degree, thirty per cent in excess of \$500,000.

Colorado makes a complete revision of the inheritance tax law. Residence, for purpose of the tax, is held to have been made if the decedent shall have dwelt or lodged in the state for the greater part of twelve consecutive months in the twenty-four months next preceding his death. Rates are materially increased for each degree of relationship. The office of inheritance tax commissioner created and the appointment made by the attorney general, the appointee to be an attorney who has practised law in the state for not less than five years immediately preceding his appointment.

Georgia amends the inheritance tax act by authorizing the inheritance tax commissioner to appoint agents to examine estates for inheritance tax purposes, the commissioner to review all appraisements and assessments made by such agents.

Illinois increases the rates on all degrees of relationship one hundred per cent, so that the maximum for first degree relationship is fourteen per cent; for second degree, sixteen per cent, and in all other cases thirty per cent. Iowa makes a general revision of the inheritance tax law. The former rate of five per cent is changed to graduated rates, the minimum being one per cent and the maximum seven per cent, for first degree relatives, and a minimum of five per cent and a maximum of seven per cent for any other "person, firm, corporation or society".

Missouri, at the special legislative session in August, increases the widows' exemptions from \$15,000, the former amount, to \$20,000; the rate on estates amounting to \$50,000 or more is slightly lowered.

Montana enacts an entirely new inheritance tax law which, it is stated, is almost identical with the Wisconsin law. New Hampshire, by a new law provides for a transfer tax of two per cent upon all personal property within the state owned by a non-

resident, upon death of the owner. New Mexico, in its general revision of the revenue system, included the former inheritance tax law but no important changes were made, the rates and exemptions remaining as in the former law.

New York in consolidating the tax agencies of the state transfers the administration of the inheritance tax to the state tax commission. An amendment provides that a "transfer made within two years prior to death, without adequate consideration, will be deemed to have been made in contemplation of death." Transfers by a "bargainor" as well as a "grantor" or "donor" are made taxable and the state tax commission is authorized to fix the number and salaries of appraisers. North Carolina amends the law, to include in the class of second degree relatives "uncle or aunt by blood". North Dakota provides that the county from which the inheritance tax is paid shall receive from the state treasurer fifty per cent of the amount, formerly twenty-five per cent. A further amendment exempts from the tax all intangibles of non-resident decedents.

Pennsylvania increases the rate from five per cent to ten per cent upon all property passing to persons other than direct heirs. Rhode Island enacts a law which authorizes the tax commissioners to employ some person to administer the inheritance tax law. In Washington, by reason of the new administrative code, the inheritance tax department is transferred to the office of the attorney general. A new law exempts from the inheritance tax bequests for charitable and educational purposes within the state.

Wisconsin increases the tax-exempt value of the estate to the widow to \$25,000, formerly \$10,000. The rates for relatives of the first degree are increased to two per cent, formerly one per cent; second degree four per cent, formerly two per cent; third degree six per cent, formerly three per cent; any other degree eight per cent, formerly five per cent. Wyoming creates the office of inheritance tax commissioner and makes the state insurance commissioner the commissioner ex-officio.

#### PUBLIC UTILITIES

California raises the rate of state tax on certain public utilities. The tax is a percentage upon the gross receipts earned within the state. Railroads, however, are separated from street railways and taxed at the rate of seven per cent, street railways at five and a quarter per cent. It is provided, however, that in case the courts determine that the legislature is without the power to thus differentiate between railroads and street railways in the rate of tax, the tax on street railways shall be seven per cent also. Various car companies, express, telephone, telegraph, gas or electric light companies are increased over former rates. The rates on all franchises, other than on those of certain public utilities are also raised.

Minnesota requires, by a new law, that the personal property of electric light and power companies, having a fixed situs, shall be listed and assessed where situated, without regard to the company's principal place of business. The rate of tax upon the gross earnings of telephone companies is increased from three to four per cent. New Jersey amends the law taxing railroads so that the state board of taxes and assessment shall complete its valuation of railroad property by November 1st. The old law provided that the assessment as well as the valuation on second class railroad property should be completed by November 1st. It was necessary, therefore, for the board to use the tax rates of the year in which the assessment was completed, though the tax was not to be used until the following year. Under the new amendment, the railroads will have an opportunity to review the valuation before the assessment is completed, and the tax rates applicable to the valuation will be the rates for the current year in which the taxes are to be used.

New Mexico provides that the valuation of such public utilities as railroads, telegraph, telephone and transmission companies shall be based upon the valuation made by the Interstate Commerce Commission, plus the value of subsequent betterments. The allocation of the value of rolling stock to the state is to be made upon the basis of days in the state. Wyoming, by a new law, requires the state board of equalization to assess all public utilities, other than express, railroad, telephone and telegraph companies. The state board shall also assess all pipe line companies.

#### MISCELLANEOUS CORPORATIONS

California increases the rate of tax payable to the state on shares of capital stock of banks from one and sixteen hundredths to one and forty-five hundredths per cent; and on the gross premiums of insurance companies from two per cent to two and sixty-hundredths per cent. Connecticut requires a retail mercantile business and a wholesale mercantile or manufacturing business to pay to the state a tax of one dollar on the \$1,000 or fraction of gross income from such business and twenty-five cents on a like amount from a wholesale business conducted within the state. In each case a minimum tax of five dollars shall be paid. If a financial loss is sustained, without making any deduction for salaries, no tax other than the tax of five dollars is to be paid.

Michigan enacts a new law which provides for fees and taxes on corporations. For filing, examining and certifying articles and amendments, and for annual or special reports certain fees are charged, varying from fifty cents to ten dollars. The franchise and organization fee for both domestic and foreign corporations is one mill upon the dollar of authorized capital stock; in any case the minimum fee is \$25. For filing annual report, the fee is three



and one-half mills upon each dollar of paid-up capital stock and surplus, no fee to be less than \$50. Building and loan associations, when filing the annual report, pay a fee of one mill upon each dollar of their paid-up capital and legal reserve, no such fee to exceed \$2,000. Mining corporations pay an annual fee of three and one-half mills upon each dollar of the fair average value of their issued capital stock, such fee not to be less than \$50 nor more than \$10,000. The tax on foreign corporations is based on the relation of the property in the state to the total property of the corporation elsewhere.

Missouri at the special legislative session in August reduced the annual franchise tax on corporations from the former rate of one-tenth of one per cent to one-twentieth of one per cent.

Nebraska places a tax of four mills on the dollar of the gross earnings of building and loan associations, this tax to be in lieu of all other taxes on the intangible property of such associations. Grain brokers, manufacturers of sugar, motion picture film distributors and oil dealers pay the same rate of tax on their average total investment as on their tangible property, this tax to be in lieu of all other taxes. New York provides for an organization tax of five cents a share on corporations issuing shares of no par value. If the corporation is foreign the license fee is six cents a share. If such corporations are subject to the business franchise tax, the shares will be assessed at actual value, but not less than five dollars, instead of \$100 as formerly.

Rhode Island adds a provision to the corporation franchise tax law that non-par value stock shall, for the purpose of the tax, be deemed to have a par value of \$100 a share. West Virginia, by an unusual law, imposes a general sales tax of one-fifth of one per cent, as a privilege tax, upon the gross proceeds from the sale of manufactured products and from the sale of any other tangible property, the gross income of banks, trust companies and public utilities, and that from "any gainful business or profession". This sales tax supersedes the former privilege taxes imposed upon all corporations, based upon net income. All sales up to \$10,000 are exempt.

#### LICENSE TAXES ON CEMENT, COAL, GASOLINE, OIL, MINERAL ORES AND TICKETS

The evident need for more revenue to meet the increased cost of government causes seven states to tax gasoline, petroleum, cement, gypsum, coal and mineral ores. Connecticut leads the way with a tax of one cent a gallon upon gasoline used in motor vehicles and motor boats. Gasoline to be used commercially or for manufacturing purpose is exempt from the tax; so also is the gasoline used to propel road rollers, street sprinklers, fire engines, fire department apparatus, police patrol wagons, ambulances owned

by municipalities or hospitals, agricultural tractors and vehicles which run on rails. Distributors will make monthly report of the number of gallons sold, to the motor vehicle commissioner and pay the tax. Connecticut also enacts a new and elaborate law which imposes a state tax on tickets of admission to places of amusement, as follows:

1. Tax of one-half of one cent for each ten cents or fraction thereof paid for admission to any place, after September 1, 1921; same rate to be paid by any person admitted free or at reduced rates, except employees, municipal officers on official business and persons in the military or naval uniform and children under 12.

2. Upon tickets to theatres, when sold at news stands, hotels and places other than the theatre ticket office at not to exceed twenty-five cents in excess of the price at the theatre ticket office, a tax of two and one-half per cent on such excess and if sold for more than twenty-five cents in excess of the price at the theatre ticket office, a tax equal to twenty-five per cent of the total excess.

3. A tax of twenty-five per cent on tickets sold by the management of the theatre in excess of the regular charge, all such taxes being additional to those paid by the purchaser.

4. Persons having the permanent use of boxes or seats in any theatre shall pay in lieu of the tax of one-half of one cent for each ten cents, a tax of five per cent of the amount for which such box or seat is sold for each performance.

5. A tax of three-fourths of one cent for each ten cents or fraction thereof paid for admission to any roof garden, cabaret, or like place, when such admission charge is wholly or in part included in the price paid for refreshment or service, the amount paid for admission to be deemed ten per cent of the amount paid for refreshment or service, the person paying for such refreshment or service to pay the tax. Exemption from this tax is granted religious, charitable and educational institutions, military organizations, societies for the prevention of cruelty to children or animals, musical organizations not for the profit of members and agricultural fairs. Every person paying the federal tax on admission shall pay an amount equal to fifty per cent of such federal tax. If such amount is paid the tax imposed by this act is not to apply. The proceeds of tax are divided one-half to state and one-half to counties.

Georgia makes provision for a gasoline tax of one cent a gallon and requires quarterly payments of such tax to the comptroller general, exempting gasoline when imported and sold in original packages.

Minnesota provides that persons engaged in the business of mining iron or other ores shall, in addition to all other taxes, pay an annual occupation tax equal to six per cent of the value of all ores mined. Methods are outlined for obtaining the valuation of such ores and annual reports are to be made to the state tax commission. The tax is for state purposes. Montana requires an annual license tax of one dollar and a further license tax on the mining of metals equal to one and one-half per cent of the net proceeds; on the mining of coal five cents a ton for all coal mined; retail coal dealers are to pay a license tax of one dollar and five cents a ton for coal sold but excluding coal mined in the state for which a license tax has been received. This state also provides for a license tax on oil-producers, equal to one per cent of the gross value of oil produced. A license tax is also provided on both wholesale and retail dealers in gasoline and distillate, equal to one cent per gallon for all gasoline and distillate sold; the retail dealer is not required to pay the tax if the wholesale dealer has paid. Sixty-six and two-thirds per cent of the proceeds of this tax goes to the state and thirty-three and one-third to the counties, the latter amount to be distributed in proportion to the total number of teaching positions in each county. Montana also imposes an annual license tax of \$1.00 and a further license tax on manufacturers of cement and gypsum, equal to four cents a barrel for cement and twenty cents a ton for gypsum; the same tax is laid on retail cement dealers but cement and plaster manufactured in the state and upon which a license tax has been paid are exempt. The proceeds of the tax on oil, cement and gypsum goes to the state.

New Mexico provides for the division of the mineral property in the state into three classes for purposes of taxation, the first class—mineral lands held by private owners—being further classified into either productive or non-productive. Definite methods of valuation of such properties are outlined. This law withdraws all mineral property from assessment by local officers and gives the tax commission broad powers and authority to employ valuation engineers. New Mexico also enacts a law which is both retroactive and prospective in its provisions. An excise tax of two cents is imposed upon each gallon of gasoline sold in the state from March 17, 1919 to and including the date upon which act takes effect and an excise tax of one cent, formerly two cents, per gallon thereafter. Gasoline brought into the state and sold in original packages is exempt from taxation. Each distributor of gasoline is to pay an annual license tax of \$25, formerly \$50, for each distributing station, places of business or agency, the proceeds of the tax are to be for the road fund, except \$15,000 for a fish hatchery.

Pennsylvania imposes a tax of one cent a gallon or fraction

thereof on all gasoline sold for any purpose whatsoever except resale, the tax to be collected from the consumer by the selling firm. Fifty per cent of the tax collected is to be credited to the various counties, to be used for the construction, maintenance and repair of roads and for the payment of interest on bonds issued for road purposes. Pennsylvania also provides for the imposition of a tax of one and one-half per cent on each ton of anthracite coal mined and prepared for market in the state. The superintendent in charge of the mine is to make annual reports to the auditor general, showing the gross tons taxable. The provision of the old law which prohibited the owner from adding to the selling price of the coal, in order to cover the tax, is stricken out of the new law.

West Virginia by a new law imposes a general sales tax of two-fifths of one per cent, as a privilege tax, upon the gross proceeds from the sale of coal, oil, natural gas and other mineral products. The sales tax supersedes the existing privilege tax. All sales up to \$10,000 are exempt from taxation.

#### INTANGIBLE PROPERTY

Michigan, by a law which relates to the assessment of cred'ts, provides that consideration must be given to the investment of the taxpayer in non-taxable credits, so that no longer will it be assumed that the entire indebtedness of the taxpayer is invested in taxable credits but that, at least, a proportionate part is in non-taxable credits.

Missouri amends the "secured debts" law by bringing within its provisions notes, bonds, debentures and similar obligations for the payment of money secured by mortgage upon real estate and by providing that the state taxes thereon may be discharged in full by paying the recorder the prescribed tax at the time of filing the instrument for record.

Nebraska in a new law provides for a classification of intangibles and their taxation in the locality where listed, on the basis of twenty-five per cent of the mill rate levies upon tangible property. Bonds and warrants or other evidences of indebtedness of the state or its governmental subdivisions are to be listed and taxed at one mill upon the dollar of their actual value. These taxes are in lieu of all other taxes upon such intangibles.

#### ASSESSMENTS

Michigan, Nebraska and New Jersey provide for a reassessment by the state board of any local assessing district, in case of any undervaluations by the local officers. In Michigan the reassessment is to be made only if the state board, in its review, makes a change of more than fifteen per cent above or below the amount approved by the local board. In Michigan all expenses of such

reassessment are to be paid by the district reviewed; in Nebraska the state pays the expenses in the first instance and later is reimbursed by the county. In the case of New Jersey the state stands the expense. The purpose of laying the expense of the reassessment upon the local unit is evidently to bring about better assessments. Michigan also provides that forest products left on the shores of any lake or stream for more than six months shall not be deemed in transit but shall be assessed.

Minnesota by a new law requires warehousemen to list for purposes of taxation all goods in storage. The assessor is authorized to enter the warehouse to list such property. Nebraska makes an important change by providing that "all property, not exempt, shall be valued and assessed at its actual value". The previous law required that all property should be valued at actual value and assessed at twenty per cent of such actual value.

North Dakota provides a county option law, for the purpose of enabling each county board, upon petition of fifty per cent of the resident freeholders, to compile a schedule and classification of all acre property, to be used by the assessors in listing and assessing taxable property. Oregon requires that an assessment upon lands reduced in value by the logging-off or removal of timber shall be a personal debt against the owner, and before any timber is removed the taxes shall be paid.

#### POLL TAX

California, in harmony with the new constitutional amendment, enacts an alien poll tax of ten dollars upon all alien males in the state between the age of twenty-one and sixty years. Certain defectives are exempt from the tax. Iowa reduces the poll tax, outside of municipalities, from six to five dollars and authorizes the township trustees to permit the working out of the tax by two days' labor, in lieu of a money payment. Municipalities are authorized to require the payment of a poll tax of not to exceed five dollars; the previous tax being one dollar and fifty cents.

Rhode Island extends the poll tax law to include women and increases the previous tax of one dollar to five dollars. Vermont provides that the poll tax shall apply to both men and women and lowers the previous rate of two dollars to one dollar. Washington adopts a new method in imposing a poll tax. The rate of the tax is five dollars, four-fifths of which goes to the state and one-fifth to the county. Employers are required to deduct the tax from the wages of employees who fail to pay the tax and the employer, for failure to do so, becomes directly liable. The tax is made a lien upon the real and personal property of the taxpayer. Jurors and witnesses are required to exhibit receipts showing payment of such tax before receiving their fees.

CHAIRMAN HOWE: This summary has been highly instructive in that it gives us a good idea of what is going on in the minds, not only of the taxing officials but of the people of the different states as well, in the attempt to raise additional revenue for purposes of taxation all over the United States. The subject will be open for discussion for a short time now, the same as the other, and then we will resume our program again.

GEORGE LORD of Michigan: On the list of states given in the paper providing for special tax commissions, I note that Michigan is not included. The last legislature in Michigan provided for a special tax commission to make a complete tax survey of the state.

GEORGE E. WALLACE of North Dakota: Day before yesterday the supreme court of California declared unconstitutional the poll tax on aliens.

CHAIRMAN HOWE: I noticed that since we came here.

J. G. ARMSON of Minnesota: Mr. Hannan did not mention at least one rather important law passed by the last session of the Minnesota legislature, and that is the taxation of automobiles. In 1920—and the paper did not mention this—we adopted an amendment to the state constitution, permitting the taxation of automobiles in a different manner from other tangible personal property. Based on that amendment, the legislature at the session in the early part of this year passed a license tax, imposing a tax on automobiles on the basis of value and weight, the value being the sales price of the automobile. The rates vary according to the price at which the automobile sells, and somewhat according to weight. I only mention that as showing that up to the present time this year the state has derived a revenue of a little in excess of five and one-quarter million, and the total revenues from that source this year will be in excess of six millions, all of which is to be charged to road work.

OSCAR LESER of Baltimore: Does that take the place of any other tax?

MR. ARMSON: It takes the place of the personal property tax on automobiles.

MR. LESER: Is there any apportionment of that tax to the localities?

MR. ARMSON: None whatever; it is all paid into the state highway fund.

PHILIP ZOERCHER of Indiana: There was no reference made to the change in the Indiana tax law. The members who were pres-

ent at the Utah meeting last year remember that we reported at that time that the special session of the legislature had repealed the provision of the 1919 law, that included the principle of checking expenditures. The principle in the 1919 tax law was that before any municipality could issue any bonds or any certificates of indebtedness, they would have to petition the state board of tax commissioners and get the consent or the approval of that commission before they could issue those bonds, and the commission was also given authority over the tax rates. The 1920 special session that met in July repealed that, and as a result of that repeal, as we predicted last year, there was about a forty million dollar increase in the taxes in the state, payable this year. The regular session of the legislature, upon a special and urgent recommendation of the governor, re-incorporated the principle, with this modification: that on the complaint or petition of ten taxpayers other than those who pay poll tax only, the matters can again come up for review, in reference to both bond issues and tax levies, to be reviewed by the state board of tax commissioners; and we can report that since this new law a great many of the bond issues proposed in different taxing districts in the State of Indiana have been checked and stopped by the taxpayers. The state board goes to the community and has the hearing in the community so that there is no compelling them to come to the capitol city, as was the practice the first year, in 1919; possibly that was the reason it created the odium against the other. We now go to the counties, and within the next thirty days we shall possibly learn whether the taxpayers in the State of Indiana will take advantage of this new amendment and ask a review of the tax levies. The date limit on or before which they can ask a review of the levies is September 26th. That, I think, is solving the problem to some extent of checking expenditures. As has always been said, the question of taxation is the question of the expenditure of public money.

CAPTAIN WILLIAM P. WHITE: Mr. Chairman, I am interested at the reaction which the discussions bring in our audience. In my meeting with the various members here I find that the majority of them, if not all of them, are members of government tax bodies, or people who are interested in tax laws, as attorneys. I have come as a simple taxpayer and I feel that perhaps an explanation on the part of those who are not so well known is in order. I am a retired naval officer and in the past ten years I have been engaged in business. In that ten years I have noticed certain changes in the tax laws in Massachusetts, and the tendency which I find there and which I feel will be met with elsewhere, on the part of those who have schemes for the betterment of mankind, is to devise new methods of taxation or impose additional burdens,

by methods that are already established. Now, the most popular method of modern taxation, as I said last night, is the income tax, which, until this last great war, has not been played with, except for a brief time during the Civil War. The income tax has been very thoroughly tried out in Great Britain; its rate has been increased; the inheritance tax has been very thoroughly tried out in Great Britain; its rates have been increased. The result is that the wealth of Great Britain that has been accumulated through centuries is being depleted by the present generation and Great Britain is becoming one of the poor countries of the world. We may very well profit by her example before we start on our way, and I am delighted to see that the people of New Hampshire and Maine realize something of this kind and voted down the income tax.

Now, this question of taxation is one of adjusting the burden so that it can be borne, so it won't gall and people won't kick. There is continual demand for increasing taxation for public expenditures. The city I live in is a manufacturing city. When I first came to Lowell, I said to a man I was walking with, "The City of Lowell paves its streets, employs its own labor and paves its streets, but it is expensive." He said, "How do you know that?" I said, "By the way the men work." I went to Charlotte, North Carolina. Charlotte is not a city as large as Lowell; it is spread over a much wider area; it has grown very rapidly in recent years, and very considerable wealth probably has come there, but the tax rate is lower; the streets are in much better order; the city shows evidence of improvements; the tax is low; why? Because the city employees are negroes who do not vote. Now, the danger is that the great mass of people in the cities do not own real estate and do not realize that they are paying taxes. They are voters, however, and they are indifferent to the tax rates. This year in Lowell our tax rate will be forty dollars a thousand. We had this fall a vote as to whether the streets should be paved under the old system of city work or by contract. It was shown that the paving that was done last year, that cost eleven dollars a square yard, as done under the Lowell conditions, could be done in other cities for less than four dollars. Notwithstanding that, the voters of Lowell—not the inhabitants—the voters of Lowell voted to continue the old method. We have now a project in the near future to vote whether we shall buy the gas works at a cost of five million dollars and use that as an additional method of employing voters, and it is a great question to me if that will not go through, although recently we have had a decrease in the gas rate. Now, the men who are administering the laws, as most of you are, ought to take that into consideration, and I feel that your reaction has been quite different. I know, as I remarked to my friend this



morning at the table, if I were a tax commissioner I should be exactly of your mind; I should feel that I should hunt out the owner of intangibles and make him "cough up"; and yet the fact is the tax commissioner of New Hampshire, remarking on the hardships of the widow who had inherited forty thousand dollars' worth of intangibles—half of the income of which would have gone in taxes, apparently sympathized with her to escape taxation, showing that there is a realization of the situation even on the part of tax commissioners.

NEW HAMPSHIRE DELEGATE: That was not in New Hampshire, I think.

CAPTAIN WHITE: I have been trying to give New Hampshire the benefit of all good things, but it shows that there are injustices, and that if we devise an equitable method of taxation we can get very wide support, as we see in the action of the different states during this past year.

GEORGE G. TUNELL of Illinois: I think perhaps the action of the state legislature of California last winter in increasing the percentage tax rates upon the gross earnings of public utility corporations deserves a little further mention than has been made of it in the brief statement read by the secretary. It is unfortunate that Professor Plehn is not here, or some member of the state board of equalization. It is to be regretted that no tax official is here from California. A few years ago we heard a great deal about the separation of the sources of revenue, separation of the sources between the state on the one hand and the counties and local taxing units on the other. Last winter I was in Sacramento during a large part of the session of the legislature and at the hearings. Professor Plehn, the sponsor of the separation system admitted that the system had broken down. Professor Plehn explained it had broken down largely because of the overloading of the public utilities.

Last summer the people of California—and this is an aspect of the matter that apparently had not originally been contemplated by the professor—the people of California voted to transfer from the local treasuries the payment of the interest on highway bonds and place it upon the state treasury. They also voted to increase the contribution for the support of schools by about seven and one-half million dollars annually, relieving themselves of that burden and placing it upon the state treasury. Last November, when the people voted to increase the state general school fund, nothing was said as to how the money should be raised, but shortly after the legislature met it became apparent that the people had contemplated from the beginning that the public utilities should take up the burden that they had laid down.

Some of the members who attended the conference at San Francisco, four or five years ago, will recall my declaration that the California plan did not simplify the question of equalization; it dodged it. Last winter the process of dodging the question of equalization went another step. Perhaps I ought to state that the constitutional amendment which changed the revenue system of California was adopted by the people in 1910. In 1912 the question of the equality of burden borne by the public utilities on one hand and the general property on the other hand was investigated. Another investigation was made in 1915 and the 1916 legislature acted upon the recommendations of the Seavey commission. The investigation of 1915 extended over a little more than a year. At the session of last winter the legislature acted without any preliminary investigation. Of course there had to be some justification set up. The state board of equalization wrote a letter to the governor and members of the legislature, in which the whole subject was disposed of by the use of a formula.

The tax bill of the Santa Fe Railroad, by the use of this formula, was increased from one million five hundred and nine thousand dollars for the year 1920, to two million four hundred and forty-four thousand dollars for the year 1921. The increase was not the result of a careful investigation. It was brought about by a few lines written by the state board of equalization, no member of which ever justified or even attempted to justify the formula. Mr. Lack, the secretary of the board, and Mr. Seavey, a member of the state board of control, did however attempt to justify the formula. The members of the legislature upon whom the duty of equalization devolved and who established the new rate, never justified the formula. They said that they had financial and statistical experts and that they had written so and so. The state board was very careful not to make any recommendation, but its language was such that the wayfaring man would infer that a recommendation had been made. We clamored for a statement of what our property was regarded as worth by the legislature. We assumed that we had the same right as the general taxpayer; that is, the right to know what our assessment was, but this was denied us, and we were never told what our property was worth, either in the minds of the members of the state board of equalization or in the minds of the members of the legislature. There was the formula, and that was the thing we had to deal with.

Another word should be said about the formula. The public utilities were notified that there would be a hearing on a certain day in the near future, and we were there on the day set. Some of us were there as soon as we could reach Sacramento. I left for Sacramento from Chicago the next morning after I heard that the legislature would take up the percentage votes upon the gross

earnings of the public utilities, but notwithstanding all my expedition, before I got to Sacramento, this letter embracing the formula had been written to the legislature. Perhaps I should say before sitting down that we have not accepted the finding of the legislature. We are now in the federal courts and I have no doubt but what this litigation will reach the supreme court at Washington.

J. W. WALKER of Montana: You noticed while the secretary read this report that Montana had imposed a number of new license taxes. One, however, was omitted from this report, and it is rather a peculiar law that the Montana legislature passed last winter. We have in Montana, as probably other states have, what is known as the widow and orphans' bill. In Montana it is taken care of by the county government, and in some of the counties it has become quite burdensome. For instance, in Silver Bow County, in which the mines are located, twenty-three per cent of the entire county taxes are paid to widows and orphans. Now, our legislature last winter believed that every man between the age of twenty-one and sixty years should help support a family, and if he did not have any of his own he should help support these widows and orphans. So, a tax was imposed on every man between twenty-one and sixty years, and the receipts from this tax go into what is known as the widows and orphans fund. This may meet the same fate that the California alien poll tax has; I don't know. However, the taxes are being paid today by bachelors, at six dollars a head. If any man has a dependent—his mother or sister—he is not subject to this tax.

A. D. WATTS of North Carolina: The gentleman who spoke previously seemed to be against the income tax. I think, sir, that the tendency will be more and more in the nation, and in the state governments, to income taxes will be made evident by citing one fact; that only six per cent of the people of the United States pay income taxes to the federal government. It will be a long and a cold day before the ninety-four per cent who do not pay it are going to permit that six per cent getting out of paying it.

CAPTAIN WHITE: I say Russia did it much more quickly, with the same end.

MR. WATTS: The people who believe in an income tax are just as far from being anarchists as anything in the world. I remember in March I had the pleasure of driving over to Greensboro, North Carolina with the richest man that our state ever contributed to the world, and he talked all the way, and the best I could get out of the old fellow was that captains of industry should be, as he called them, regulated by law or should not pay any tax. That was the best I could get out of his talk.

Our state has recently imposed an income tax. We had an income tax on salary fees derived from corporations not taxed for many years, but by constitutional amendment we proposed to levy a tax on incomes, graduated from one to three per cent, on individuals and corporations. We have the same exemptions as under the federal law. The returns are very simple. The only question that we will ask will probably be to require the person making the return to swear to the income he returned to the federal government. We believe that they will make a true return to the federal government, and will probably do the same thing for us. We have the benefit now, not only in North Carolina but in the other states, of taxing public service corporations, such as railroads, because we have the benefit of their statements of what they are worth, made to the Interstate Commerce Commission, using it as the basis of our assessment of their property. That reminds me of a little incident that happened when they were having the draft law in 1917. At that time I was collector of internal revenue; I had my office in my home town. There came in one day a former neighbor who lived in my old township, named Tom Miller. He wanted me to help him fill out exemption papers for his son Jim, and he wanted Jim exempt on agricultural grounds. In order to get an exemption on those grounds he had to show him as being a farmer. Tom and his neighbors said how much corn and cotton they grew—a tremendous farmer he was. I did not think we had such a farmer as that in our entire township. That fall Tom had been notified that probably he would be subject to an income tax. He gave in his property—I mean the crops that he had sold. He had returned the income, but not a taxable one. He had so many children, as is the custom in our county, that it let him out from paying any tax. As he got to the door, he came back and said, "Do you reckon up there at Washington they can get that paper I filled out when Jim got out of the army with this one I gave in? Do you reckon the two of them will get together?"

I think we need economy in public expenditures. Our states and the national government are spending too much money; they are going into too many new things, and I think our legislators get in the position of the most distinguished son of the State of New Hampshire, Daniel Webster. On one occasion, after dining well, some one spoke of the national debt, and o'd man Dan got up, hands in pocket, and says, "The national debt! why, I will pay it myself!" So I think, Mr. Chairman, that it would be well to have economy in expenditures, and then levy taxes in such a way as to create the least resistance among our people.

S. S. KALISHER: I am here, not as a speaker or representing anyone in particular, except perhaps a taxpayer, and I am just wondering if the members of this conference have taken into

consideration at any time the effect of taxation upon America's foreign business. A production tax, for instance, or a general manufacturing tax, while small and insignificant, often measures very closely to the profit on export business. I am just mentioning this subject, wondering if you would give it consideration and thought in advance of legislation, in its application to our general export business. Those that had been doing a big export business during the war period and a few months following thought very little of any sort of a tax. The profits, generally speaking, were large, and taxes were not thought of, but conditions change, as most of us know, and taxes, after all, while they may be drawn from the local taxpayer and from business conducted in our states of the United States, while taxes of that sort may be levied and collected, still some thought and some consideration should be given to taxes derived from profits on foreign business. We know we must compete with the British and other foreign governments in coal, lumber, oils, gasolines, and a general sales production tax, even of a nominal sum, will materially affect the sale of that gasoline or lumber or any other natural product. I don't know how it will affect our West Virginia coal producers, but I do know this; that if the producers of coal in the United States are able to ship coal to South America and compete with the British coal producers, and bring back raw materials to be finished into manufactured articles, as the Germans formerly did, we may be able to support a merchant marine. Our boats cannot go down to South America empty and bring back a little raw material. By "empty", I mean practically empty. They have to carry something besides a little manufactured goods. The hold of the boat will carry a lot of raw material. I have a fear that a production tax, or a manufacturing tax on our natural resources, might possibly hinder the growth of our foreign trade abroad. We have competition of foreign workmen; we have the competition of the subsidies offered by foreign governments, and in my humble mind I cannot see how America can ever hope to expand its foreign business with high wages, high taxes, and all things that go into the cost of making and selling goods. I simply make these few remarks, asking you gentlemen—most of you, I take it, are state tax commissioners and advisers—to make this matter a subject of thought, in advancing propaganda for legislation with respect to taxes. I thank you.

CHAIRMAN HOWE: We will now close this discussion temporarily and resume it after the program is finished. The next speaker is A. V. Louthan, state tax commissioner of Tennessee. Is Mr. Louthan here?

SECRETARY HOLCOMB: Mr. Louthan is one of those who kindly consented to make a few remarks to start off the discussion. I felt

very doubtful whether he would be here, because, as I happened to know, Tennessee has just joined the ranks of state tax commission states. It has the very latest tax commission of the country. Mr. Louthan wires: "Regret exceedingly cannot be present at Association. The state tax commission, of which I am chairman, in session, submerged in work. Tennessee sends greetings. With best wishes for success."

CHAIRMAN HOWE: The next speaker is Clarence C. Killen of Delaware.

[No response from Mr. Killen.]

SECRETARY HOLCOMB: This is another topic that I thought would be interesting. They have something unique there, namely, a school income tax act, which the state administers, the proceeds being devoted entirely to schools. Mr. Killen was prominent in the drafting of the law and I understood he was coming. I have had no word from him.

CHAIRMAN HOWE: A. J. Maxwell of the North Carolina corporation commission is not here. Mr. Watts, have you any further remarks to make?

A. D. WATTS: I don't think so, Mr. Chairman. I might state this: We collect our state revenues from taxes on insurance, income tax, inheritance tax, license taxes on all business, and on the sale of gasoline, and the capital stock tax on corporations. The license tax on automobiles is graduated, I think, from about ten dollars up to about forty or fifty, and probably one hundred on trucks. It is on the horse-power.

CHAIRMAN HOWE: The next speaker on the program is J. T. White, Solicitor to the Treasury of Ontario.

J. T. WHITE: Mr. Chairman and gentlemen of the Association: I should like to take this opportunity of thanking Governor Brown and the members of the association for their courtesy in giving the representatives of Canada an opportunity of attending this convention. It is a delightful country. I might say, although we are foreigners, we do not feel like foreigners when we are among you, and we hope when you come to Canada that you will not feel that you are in a foreign country, and would like to have you there soon. As I came in the room I found a little memorandum from Kansas City, and I think the man apparently had recently been in Canada. He says, "Kansas City is the most American city in the United States." Now, I don't know where you would expect to find the most American city, but I can tell you if you come into Canada, especially Western Canada, you can find the

most American cities in North America. Kansas City may claim the distinction of being the most American city in the United States, however, just as Boston claims to be the most English city on the North American continent. We will say for Montreal, they have more Scotch there than you find in any other place.

OSCAR LESER of Baltimore: Isn't it somewhat diluted?

MR. WHITE: You can dilute it if you wish or take it as you find it. I should like to say just one more word, to thank Governor Brown and the members of the committee on arrangements for the very pleasant trip they gave us yesterday. What we saw of the view was really worth coming to see. We understand the view from the summit, when you can see it, is inspiring. You can see Canada on the north, the Atlantic on the east, on the west, I am told, as far as Lake Champlain and the Hudson. There is nothing said about the view to the south, and I presume, on account of its being called Mount Washington, you can see as far south as Washington.

Now, I have very little to say. We have had very little new legislation in the Province of Ontario. There are one or two important things I might refer to.

For the year ending October 31st last the ordinary receipts of the Province of Ontario were in round figures \$25,000,000. The principal items being, dominion subsidy \$2,400,000, motor vehicle tax \$2,000,000, lands, forest and mines \$4,000,000, succession duty or tax on inheritance \$4,000,000, tax on banks, railways and other corporations \$3,000,000, tax on amusements \$1,500,000.

The tax on banks has recently been increased by over one hundred per cent.

A tax of one-fifth of one per cent has been imposed on real estate transfers. This tax has been in operation for only three months and the indications are that it will bring in half a million per year.

A provincial tax has been placed on billiard tables of \$10, \$15, and \$20 per table, according to the size of the city, this in addition to any municipal tax.

In 1919 authority was given to the council of a city, town or village, with the assent of the electors qualified to vote on money by-laws, to pass a by-law providing that taxes, except for school purposes on dwelling houses assessed for not more than \$4,000, shall be levied and imposed on such percentage of the assessed value as may be thought proper but not on a less percentage than the following:

(a) On dwelling houses, assessed at not more than \$2,000, on not less than 40% of the assessed value.

(b) \$2,500 on not less than 60%.

- (c) \$3,000 on not less than 70%.
- (d) \$3,500 on not less than 80%.
- (e) \$4,000 on not less than 90%.

Township councils have the same power and in addition the by-law may in the case of farms extend to and apply to all buildings used for farming purposes.

The city of Toronto passed a by-law accordingly which came into effect this year and the exemptions under the by-law for seven out of the eight wards amounts to \$50,000,000.

The succession duty act has recently been amended so that the tax on inheritances is in some cases as high as 35%.

OSCAR LESER: Can I say something on the very interesting point made by Mr. White, it being absolutely a new thing; that tax on branch banks. I was in Toronto a month ago and noticed in particular on almost every street corner a branch bank. I took the trouble to inquire through the chamber of commerce how many there were. I believe it was said there were 335 branch banks in the City of Toronto, paying a tax of three hundred dollars each, which is almost a revenue of one hundred thousand dollars.

CHAIRMAN HOWE: The next speaker on our program is W. H. Osborne, state tax commissioner of Nebraska; is Mr. Osborne in the audience or is he here?

SECRETARY HOLCOMB: I don't think Mr. Osborne was able to come. He is also a very recent commissioner and just at the present time is in the midst of arduous work connected with the revaluation and assessment of property. That is another of the states that has all these years been behind the procession. Nebraska and Tennessee have now come into line and are marching along with the other states by establishing tax commissions.

CHAIRMAN HOWE: Is there anyone else here from Nebraska who could respond for Nebraska under this head?

[No response.]

CHAIRMAN HOWE: Now, gentlemen, the subject is open for discussion.

J. F. ZOLLER of New York: If the meeting is open for discussion, I would just as soon start the discussion. There are a few things I might say that may be of interest. I have been a listener largely at this conference, and have been much impressed by what has been said by many speakers, but I am somewhat amused and surprised that there are among us a few people who, perhaps owing to the fact that they are new in the game, do not realize what has been taking place in this land of ours for a number of



years. There have been enacted three amendments to the constitution. I think we probably all know about the one prohibiting booze and the one permitting women to vote, but we do not seem to realize that we decided in this country for an income tax. I think the situation is inevitable that the income tax is with us to remain for some time. I think it was a wise amendment; a wise tax. Whether that be true or not, it is here. I don't think we are going to get very far if we try to point out that we made a mistake in going into income taxation, but I think we can very profitably devote a great deal of our time to getting the best income tax that is possible under the inevitable situation and condition which confronts us. We have heard mostly from tax-gatherers. I represent taxpayers and always have, and so far as I am concerned personally and so far as the people I represent are concerned, they probably would be in favor of no taxation at all; but inasmuch as an income tax is inevitable, I think we ought to spend a great deal of time in getting the best income tax that we can, and this is very important today for the reason that other legislation is being held up in the nation until the tax legislation is disposed of.

I have heard gentlemen talk about the old matter of ability to pay, and some one raised the question that there is no argument in favor of it, but people do not agree with that. He cited as proof of his statement that the property tax was not based on ability to pay. That has been the chief trouble with it. Years ago all taxes were imposed on land, when they were small, and only a few people paid them, and there are a few individuals—we have always had them with us, and we always will have some of them with us—who believe that we should continue to tax land and nothing else, but they are in the minority. They must necessarily remain in the minority, because that argument has been exploded time and again. It won't do. So, we are confronted here with a condition and not a theory; and the question is, if we must have revenue, and if the people have decided that an income tax is a fair tax, the question is how to get the best one we can; and it is a little bit like a waste of time, it seems to me, to say that we can get along without an income tax. We have been moving in the other direction. I think we are going to continue to move in that direction for a long time to come. I have no objection to avoiding taxes if the result of avoiding them will not bring about a worse situation; and very often that happens. In the State of New York the business concerns favored an income tax, not because they were anxious to pay more money; the taxpayer is never anxious to do that, but they saw the handwriting on the wall, and it seemed inevitable, the way that we were drifting, that unless we had an income tax, we were going to have a confiscatory tax in

many situations. I think this is true: that so far as business is concerned, an income tax tends to build up business, tends to make more people prosperous, because we do not tax the fellow unless he does make a profit, and the fellow who does not make a profit has the opportunity to get himself in that position. We say only six per cent of the people are paying an income tax now. It is larger perhaps, but if we continue along that line we may reach a point where seven per cent, and then perhaps eight per cent, will be paying. If we do not tax them before they have ability, we put them in position to get that ability. We may build up gradually. It is a gradual process, the prosperity of the country; and we increase the ability to pay taxes as we increase the general prosperity of the country.

I was much interested in this experiment down in West Virginia, and it is an experiment, and its success at the present time I think depends largely upon the fact that the rate can be made low. If you make your rate low enough it does not make so much difference whether you have a logical tax or not. Years ago, as I said before, when taxes were very small, land stood the burden, paid all the taxes, but they were small. We have now reached a condition where we are spending more and more money. We hear about economy, and economy is a good thing, but this additional expenditure is inevitable. We have reached a condition where people are demanding more and more from government, and I think the better class of people of this country, while they do not believe in socialism or division of profits, or a division of property, do believe in making this country one of the best countries in which to live, and they agree that in order to do that, we must spend more money than we have been doing. Perhaps the pendulum has swung too far; that very often is inevitable. Whenever any change takes place, you go from one extreme very often to the other. The pendulum swung too far in income taxation—we tax some people too much—but it is going to equalize itself; the pendulum now will come back, and an association of this kind has a good opportunity to see that that pendulum lands in the proper place between the two extremes, no taxes on the one hand for those who have no ability to pay, and not extreme taxes on the other.

Just one other thought. I do not want to get into a discussion here of the sales tax, because I have been into that for six months, and I think that subject has been exhausted. It has been exhausted as far as Congress is concerned. Everybody has been heard that wanted to be heard in regard to it, but there is this thing about a sales tax. You say it is either paid by the consumer or is not paid by the consumer. Now, if it is paid by the consumer, then it is not a tax based upon ability to pay. The man

without any ability at all has to contribute just the same as the fellow with the greatest ability to pay in the country. On the other hand, if it is not shifted, it is paid by the business and becomes a tax upon gross income instead of net. If it is a tax upon gross income it is very inequitable between different businesses, because the net profit of different businesses is not the same. You are taxing a fellow who makes a profit of one-half of one per cent, if his gross happens to be the same as the fellow who makes a profit of fifty per cent; or, you can go further and tax a loss if his gross happens to be the same; require him to pay the same amount in taxes as the individual or concern that makes a substantial profit. That is inequitable as between different businesses. It certainly is shifted or it is not shifted; there is no middle ground in that situation. For that reason it is thought by many people who have considered the thing thoroughly, and outside of its political aspect, that it would be inequitable either way.

It is a little novel for a state to take up this kind of tax even if the sales tax were thought to be a logical tax; it would be difficult to apply it to a state, because a state is in an entirely different situation than the federal government. You have your interstate commerce proposition; you cannot put a gross sales tax upon interstate commerce. You can tax a net income but not a gross income, and so you must follow a line all the time. A man perhaps is doing business in the state in competition with another who is doing interstate business, and it is going to be difficult for him to compete in some cases. Some people will buy outside of the state and have the goods shipped indirectly to them. If the tax were on the whole country, you would not have that difficulty, but it is much more difficult, it seems to me, to have it work out equitably if it is applied to a state than it would be if applied to the nation as a whole.

Just one more point in answer to the gentleman, I think from North Carolina, and I was much interested in what he said; that is the old question of the separation of state and local revenues. The reason I speak about that is because the State of New York has had probably as much experience in having no state tax in years gone by as any other state in the Union. I believe that state at one time or another has raised more taxes from indirect sources for state purposes than any other state in the Union. I think that in 1907 — I did know at one time — the expense of the state government of New York was something like twelve millions of dollars. I believe now it is over one hundred million dollars. We found that where we raised taxes indirectly, in that way, for state purposes, the more we raised, the more we spent; that when we raised two million dollars we spent two million dollars; when we raised eight million dollars we spent eight million dollars; no

matter how much we raised we spent it all, and had to look for new sources all the time. I think that where you do have separation of state and local revenues altogether, it has tended to lead to extravagance. We have very few checks on expenditure anyhow, but I do think a direct state tax on everybody who pays taxes is to some extent a check upon state expenditures and one of the few checks which we have. It became a political argument in New York, as I remember it, years ago. A certain political party advised that if they got in power there would not be any direct state tax, and that party got in power and they undertook to do away with direct state taxes, and over a period of about ten years, from 1907, there were only five years in which they did succeed in having no direct state tax. No matter how much revenue they got, they were short and had to have a direct state tax, and so I think that that is a bad policy and tends to lead to extravagance. Mr. Chairman, I always talk longer than I intend to, and I want to apologize for the time that I have taken.

C. P. LINK of Colorado: Mr. Chairman, and members of the conference: Mr. Zoller has covered the field that I intended to speak upon very much more completely than I possibly could do, therefore I am going to pass over the general ground, except to say, in reference to gross receipts taxes and gross sales taxes, that I see no justice in either, for the fundamental reason that they do not consider tax-paying ability. Now, just touching upon income taxes—and I wish to say that as I see it, the dawning of light of salvation in this country, is a very intelligently worked out combination of property, income and inheritance taxes—but just touching upon concrete figures, I wish to remind you that Colorado, like all of the rest of the states, now has an average property rate of from two to three per cent on practically full value assessments. Our cities average in total property rate from two and one-half to eight per cent, very many running from four to five per cent. Now, let us consider cold figures. A one thousand dollar property valuation at a three per cent rate pays thirty dollars. In our proposed income tax, the committee has recommended a maximum of six per cent. Take a one thousand valuation in intangibles—and we must admit that intangibles represent just as good and clean wealth as tangible property—take six per cent on intangibles; from every one thousand dollars you get a gross income of sixty dollars. Take your maximum of six per cent of the income and you get a tax of three dollars and sixty cents. Members of this conference, there is your result; thirty dollars to the man or woman who owns tangible property, as compared with three dollars and sixty cents to the man or woman who owns intangibles. How in the name of Heaven can we object to that kind of a result?

Now, just briefly touching upon the reference to tax officials. Members of this conference, I wish to make it clear to you that in rare cases indeed do tax officials impose taxes. It is the people, directly themselves or by their elected officers, in town boards, township boards, school boards, county boards, the state legislature and our national Congress, that lay the taxes that the officials have to administer. The impression that has come out here from one or two speakers assaulting tax officials is the unfortunate condition that stirs up unfair agitation throughout our nation, as well as throughout our states, counties, school districts and towns. Just to make that concrete — we understand sometimes better by concrete examples — it happens in Colorado that the tax commission saw this unfortunate result of heavy taxation on property coming, and we recommended very strongly to the people of our state years ago, to either cut down their expenditures or provide better systems. Some attention has been paid to those recommendations, but not much. But, at the state election, covering the entire boundaries of Colorado last fall, in spite of the unfortunate business depressions which hit our nation, starting in June, and getting very serious in September and October, the people, by enormous majorities, themselves voted an increase in the limit of state levy, from four mills to five mills; a straight increase, at one jump, of twenty-five per cent. In addition to that they voted five millions of dollars for road bonds by a large majority. Following close upon that action the members of our legislature, elected freshly by the people, increased enormously the miscellaneous state expenses. Now, members of this conference, I wish to make it clear to you that it is not the tax officials, it is the people and the governing bodies that levy taxes, and the tax officials have to carry the burden of administering the law and making the collections under the law. (Applause.)

Just one more minor matter that is beginning to reach importance in all of the states; that is, automobile taxation. Judge Armson, in the special auto law recently adopted in Minnesota, can you tell me the minimum and maximum licenses for autos?

J. G. ARMSON: The minimum, Mr. Link, is twelve dollars. That would be imposed upon a Ford car, not weighing in excess of two thousand pounds. There is no maximum set. The selling price of the car fixes the maximum.

MR. LINK: What would that reach on an eight thousand dollar valuation?

MR. ARMSON: It would reach one hundred and sixty dollars.

MR. LINK: On the selling value or the market value, after it has been used?

MR. ARMSON: On the selling value of the car, and every car, for the purpose of the tax, is considered as a new car, until three years old, and then for the fourth and fifth year a discount of twenty-five per cent of list price is made.

MR. LINK: Colorado has been confronted with this proposition: We have heard the echoes of this law and the good roads association of Colorado recommended a similar law to cover all automobile taxation by licenses, but when the draft of the bill came in, the maximum license was fifty dollars, and the situation is this, that most of the autos of Colorado, as of course they are in other places, are in the towns and cities, and taking a moderate priced car—say a two thousand dollar car—a car that is assessed at two thousand dollars, or assessed at a depreciated value at that figure; the tax in the three per cent town, which is the average, would be sixty dollars. In addition, we have our state license taxes. Unless we are very careful, in wiping out property taxes on autos and going into license as a sole tax, we are going to lose a lot of revenue, which of course should not be done, because those of course who drive autos are the ones who cause the agitation and demand for good roads, which, next to schools, takes the largest amount of money. The tax commission in Colorado recommended that our license taxes be doubled and that our property taxes be left on them. The point is that the states should be very careful, because if they are going to strike autos from property taxation, unless they are to put their licenses commensurate; which I fear will reach a stage that will scare the members of the legislature out; you are going to lose a great deal of revenue from a source from which it should not be lost.

HUGH SATTERLEE: I am not surprised that Mr. Zoller does not care to engage in a discussion of the merits of the sales tax, although he does take occasion to indulge in some of the multitude of sophistries in opposition to it.

I want to say that I am thoroughly interested in the income tax, and what I have to say is more than anything else in the nature of an inquiry, which I think is fundamental and very important. Upon one extreme are those who may believe in no income tax whatsoever; that is to say, in no tax that is based on income, or roughly speaking, on ability to pay. At the other extreme are those who may believe solely in an income tax; that is, in a tax based solely on the ability to pay, so that people who have temporarily no income would pay no tax. Now, I may be wrong, but I am inclined to think that there are very few here, if any, who believe in either of those extremes; so that the question does arise and becomes very important as to the distribution of the burden—of the relative amount of the burden—between taxes on income and taxes based otherwise than on income.

Personally I am very much interested in and should be very glad to know the experience of the various states which have income taxes and the opinions of their taxing officials with reference to the distribution of the burden. I take it, for example, that even where a state imposes an income tax, it does not thereby intend to get rid altogether of the tax on real estate, or possibly in some cases, on personal property also. What I should like to know, particularly with reference to state income taxation, but also for its collateral bearing on federal income taxes, what state taxing officers think should be the distribution of the burden between, say, general property taxes or real estate taxes and other kinds of taxes that are based simply on the possession of property or on occupations, and what amount should be based on income taxation.

In connection with the discussion here of this West Virginia sales tax, it was brought out that under the federal income tax law possibly only six per cent of the people of the United States pay income taxes, and Mr. Watts of North Carolina said that in North Carolina he thought that some kind of income tax was proper. I am content personally to favor or believe in the propriety of an income tax that reaches only six per cent of the population of a state, provided the other ninety-four per cent are paying other kinds of taxes; but to conceive of an income tax as being the only state tax and as reaching only six per cent, or ten per cent or twenty per cent or fifty per cent of the population, and the other fifty per cent on up to ninety-four per cent going free from taxation altogether, I consider shocking and iniquitous—an utter perversion of democratic principles. I think, to use the language that Captain White has used, it is going back to Russia and is anarchistic, and I do not believe that Mr. Watts would advocate any such result in income taxation.

Now, I say that merely to bring out the point I am trying to make, the question which I am trying to raise as to the proper distribution of the burden between income taxation and property taxation in states, because my study of the subject of federal taxation for the last year or two has continually brought to my mind the question which does not seem to receive as much attention as it should, as to how much of federal taxation should be based on income and how much on other sources than income taxation, and in advocating as I have a general federal turnover tax—sales tax so-called—I have never said anything, so far as I know, which would indicate that I was in any way opposed to the federal income tax, because I am not; I am a very thorough believer in it. But I do not think for one minute that the federal government can rely for all of its revenue or for a disproportionate part of its revenue merely on income taxation. So if any state officials

do not care to speak here this morning, if they would be willing to let me know privately from time to time during the conference their views on the distribution of taxes, I should very much appreciate it.

CHAIRMAN HOWE: Mr. Lord of Minnesota, have you some observations to make on this subject? Could you give us your views on this subject?

SAMUEL LORD: No, I do not believe that I care to indulge in that discussion. Now, that I am on my feet, I should like to call attention to an error in the summary of new tax laws read here this morning. The statement was made that Minnesota had enacted a law imposing a six per cent tax on the value of ore. That is rather misleading. They have passed a law imposing a six per cent tax on the net value of ore at the mouth of the mine. The law provides for the deduction of the cost of mining and practically all the other costs.

W. S. HALLANAN: Inasmuch as the West Virginia sales tax seems to have precipitated the main discussion here, I should like to have just a moment to answer one of the arguments suggested by Mr. Zoller as indicating that the principle was impractical from the standpoint of the state. Mr. Zoller has said that it imposes an undue burden and an undue handicap upon the business man in the State of West Virginia who comes into competition with some man engaged in a similar business in some other state. That is by no means a new argument. That was suggested at the time this act was passed by the West Virginia legislature, and I feel that it can be easily dissipated, when it is taken into consideration that while the manufacturer in West Virginia, or the man engaged in any activity or business, may be subject to a small sales tax when he comes into competition with the man in New York or the man in Massachusetts or the man in North Carolina, that man is subject to an income tax, which probably levies a greater tribute than is levied upon the man in West Virginia. For that reason I say that the argument is not tenable and is not a valid objection to the principle, so far as it affects the state invoking the principle of the gross sales tax. It is true that we have it in West Virginia only in its experimental stages. It is a new thing; we are trying to give it a trial. I confess that at the first suggestion of the principle I was not in sympathy with it, but I have been converted to the idea that as a matter of choice between the gross sales principle and the income tax principle, I am one hundred per cent for the gross sales principle. I merely wanted the opportunity to answer the argument that it was an impractical principle of state taxation.



J. T. WHITE: I should like to ask the gentleman from Minnesota if, in addition to the output tax on mines, there are any taxes collected by the municipalities; and if the state gets back any part of that output tax.

SAMUEL LORD: The output tax all goes into the state treasury, if the law is finally upheld. The law has not been passed upon by the courts; as it undoubtedly will be, but if the law stands, the tax is a state tax.

MR. WHITE: Is there any additional tax imposed by the municipality?

SAMUEL LORD: A very substantial tax on mines in Minnesota. They pay on a valuation higher than any other class of property in the state. Mines are assessed for taxation purposes at fifty per cent of their whole and true value in money. That tax goes to the various subdivisions of the state, and to the state as well. The output tax is a surtax; it is a tax in addition to all of that. It is not a recommendation of the tax commission. The tax commission recommended that if an output tax were adopted in Minnesota, it should be in lieu of other state taxes; it should be the only revenue the state derives from the mines.

MR. WHITE: Just one more question while I am on my feet. I should like some information from probably the tax commission of Pennsylvania regarding the tax on gasoline. I think possibly we shall put a tax on gasoline in the Province of Ontario.

SECRETARY HOLCOMB: Is Mr. Fertig here?

JOHN H. FERTIG: I would say that the tax in Pennsylvania on gasoline is one cent a gallon for all gasoline for purposes other than resale. That is, the tax is levied on a retail sale.

MR. WHITE: How is it collected?

MR. FERTIG: Collected from the consumer by the retail dealer.

S. S. KALISHER: Does that apply to export business?

MR. FERTIG: No, it does not. Of course it would, if the export be between different states.

MR. KALISHER: No, I mean a cargo of gasoline sold to a consumer in France; would the tax apply?

MR. FERTIG: If it were a retail sale, undoubtedly it would. It however would not be a retail sale if it were shipped to France; that would be a wholesale sale.

MR. KALISHER: It is a sale for consumption.

MR. FERTIG: I don't know what interpretation will ultimately be placed upon the act, but it is accepted that it shall be one cent a gal'on.

GEORGE VAUGHAN of Arkansas: It is a little embarrassing, Mr. President and gentlemen, at this late hour, at the moment of adjournment, to speak when I haven't anything to say upon the immediate subject in hand, but I do thank you for the opportunity of a little expression from Arkansas. Maybe it will relieve the situation. Early in the year our state was unfortunately the target of a good many criticisms. There are some peculiar situations down there regarding special improvement taxes. The *New York Times* paid its compliments too at the time. Column after column appeared on its first page, and in consecutive issues, in rather disparaging vein. I want to explain at this occasion that the situation in regard to special improvement taxes in Arkansas all related to the building of roads. There has been a pretentious road program undertaken in the last two or three years, due probably to the initiative of the legislature. As I happen to be a member of the senate, and thus of the legislature, I have some responsibility in that direction. The only way that we can build improvements of that sort in Arkansas is by creating special improvement districts. We have no authority under the constitution for levying a tax to pay off bonds or issue bonds for a special improvement, so every improvement of any kind, like roads or streets and such as that, is brought about by means of a special improvement district. The legislature undertook a very large project; created a large number of improvement districts; the communities were largely in favor of it; everybody wanted the new roads, and as a consequence we bit off more than we could chew, to speak metaphorically. And there was a political aspect too; the new incoming governor was very much of a reactionary and he gave encouragement to these criticisms, and as a result the hue and cry went up that Arkansas was bankrupt, facing a large obligation that she could not undertake to pay, and never would be able to pay. That is a very serious mistake. Recently I have made some investigation and there has been investigation made by other agencies in Arkansas, and it might surprise you to know that of the first annual installments to be paid on these large bond issues, there has been on the average less than one per cent of delinquencies. It does not look as if Arkansas is bankrupt. While the conditions are not very flattering, the fact is they have risen to the point of paying these improvement taxes; here have been no delinquencies, and as a result we feel we are going ahead with the program; perhaps not as rapidly in the matter of construction as before, but we have the ultimate purpose of establishing a good line of roads and other public improvements.

Another erroneous idea has gone out, and that is that there has been default and delinquencies in municipal bonds in Arkansas. A very careful investigation shows that there have been only two instances in the history of the state where there has been a default in the payment of the principal of bond issues, and both of those were laid to the state of lumbering and logging in small improvement districts. There have been a number of cases involving questions of municipal bond law, but they arose in anticipation of the issue so as not to result in a loss to the man who put up the money. Now, you might ask the question that was asked me once, when I attended my very first convention, as a college boy, at Richmond, Virginia, where some one asked, "Where in hell is Arkansas?" I want to remind you just briefly, without too much enthusiasm, that Arkansas produces all of the aluminum metal used in this country; it also has diamond mines and a great many other things. I won't go over those things, but I want to say that once a friend of mine who lived in Virginia was reading a story about a matter that happened in Arkansas and reading it aloud to a crowd, in the way of ridiculing the state, and I corrected his punctuation. The story read something like this: There was a family of farmers who lived in Tennessee; they were no good; shiftless and this, that and the other; finally the farmer decided he was going to move to Arkansas. You know you only have to cross the Mississippi River to get to Arkansas. His grown girl said: "You mean you are going to Arkansas?" "Yes." Her remark, as my friend read it, was, "Goodbye God, we are going to Arkansas." It really was, "Good! by God, we are going to Arkansas."

JOHN H. LEENHOUTS of Wisconsin: I want to make just one statement in respect of the distribution of taxes. In my home county, where we have slightly over four hundred thousand inhabitants, I find that last year we had over twelve per cent of the population that paid an income tax under our statute. Taking the real estate assessment and the number of taxpayers that pay taxes on real estate, I found there was only about thirty-six per cent of the population that paid the real estate tax, so that we find there is a very fair comparison; twelve per cent paid an income tax and thirty-six per cent paid real estate taxes or personal property taxes.

OSCAR LESER: You mean of the adults, or including women and babies?

MR. LEENHOUTS: Population; state census.

MR. LESER: All people, including children?

MR. LEENHOUTS: Yes, so there seems to be a very good distri-

bution, but under our law our exemptions are considerably lower than they are under the federal act. Our exemptions are twelve hundred dollars for husband and wife and two hundred dollars additional for each child under eighteen years of age. It has been stated on the floor that this country is in great danger of following England and other countries in the levying of these taxes. I do not believe there is any danger in the levying of the income tax, but I do believe that there is great danger in the many things that we have attached to this income tax, in the form of tax exemptions that are leading us in those directions, and I believe that is one feature of the income tax that should be given some attention, so that there will be a stop made somewhere, in allowing tax-exempt securities to grow in the amount as we have found they have been growing in the last five or ten years. I believe that is a dangerous part of our fiscal plan under the income tax law.

HUGH SATTERLEE: I should like to ask the gentleman from Wisconsin a question. I had in mind before the amount, not the percentage. I don't suppose that thirty-six per cent who paid the real estate tax represents the real distribution of the tax, because I presume the tax in the end is paid as much by the tenants, but what I have in mind is the amount of money involved. In other words, about how much was raised from the income tax, and about how much from the real estate and general property tax. Can you tell me those figures just roughly?

MR. LEENHOUTS: I believe the figures in our county would show about five million dollars for the income tax and our levy on the real estate tax would run somewhere along about fifteen to nineteen million dollars.

MR. SATTERLEE: Do you consider that a fair proportion, about one-quarter or one-third for the income tax, and two-thirds or three-quarters for the property taxes? I think that is a very fair distribution.

THOMAS E. LYONS of Wisconsin: I can give Mr. Satterlee figures on that for a broader area. Mr. Leenhouts represents the county of Milwaukee, which comprises Milwaukee city, and the proportion of income to property taxes is very much greater in cities than in rural districts. Mr. Satterlee raised the question of the proper proportion between income and property taxes. As far as I know, an income tax is not advocated as an exclusive tax anywhere. It is advocated as an additional or supplementary tax, an equalizing tax, in connection with other taxes. The general property tax in Wisconsin, as well as everywhere else, constitutes the great source of public revenue. It should be borne in mind that the yield of our income tax is reduced by the provision which

permits personal property taxes paid by the owner thereof to be offset against his income taxes. The real test should be the amount of income tax actually assessed, and that was eleven million dollars last year. Now, that is somewhat in excess of our normal yield, and reflects in a considerable measure war profits—or at least some profits derived during that prosperous period. What we reckon as a reasonably safe annual return from our income tax would be between eight and nine million dollars—possibly ten. The highest we attained prior to the war in assessments was seven million dollars, and even that included some of the early war profits, but for the fiscal year ending on July 1st, 1920, the assessment of income in the State of Wisconsin was eleven million dollars, in round numbers. The property tax levied for that year on the general property of the state was seventy-six million dollars. The railroad tax, which is an advalorem tax, and other miscellaneous taxes brought the total up to practically eighty-six million dollars, including all forms of public service corporations, which are assessed on the advalorem or property tax basis, but in a different way, and all paid into the state treasury. Taking one year with another, the Wisconsin income tax would not produce more than ten per cent of the aggregate revenue of the state if the offset were repealed.

Now, I cannot answer the question as to what is the proper proportion between income and property and what their respective contributions to public revenue should be. That is a matter of public agitation in the state. The governor and others strongly advocate an increase of the income tax, on the theory that it is not producing its fair proportion of revenue, as compared with property taxes, but as far as I can see there is no natural or logical relation between property and income and the respective amounts that they should yield. The proportion would vary in different states.

The experience of Wisconsin is somewhat significant in this, that so far as I know, it has the highest income tax rate of any state in the country. We start with one per cent in the case of individuals and two per cent in the case of corporations, reaching the maximum of six per cent; but that six per cent rate, as far as I know, is the highest of any income tax in the United States, and that applies to all forms of income. The yield of the income tax, using round numbers, is ten per cent of the revenue required for all purposes in the state of Wisconsin. It is not at all impossible that that may be increased without prejudice to business, but in the present situation, with an income tax in only a few states and many of them without one, it seems to me that the rate should not be put up above ten per cent, and it may be hazardous to do that. If the general consensus in Wisconsin were taken, it would show that six per cent is about as high as you can safely go, with the present state of income taxation in the different states.

SECRETARY HOLCOMB: That personal offset is rather a difficult thing, isn't it? Doesn't that wipe out the income tax really?

MR. LYONS: Very much. To my mind it is indefensible.

SECRETARY HOLCOMB: It destroys the validity of your figures.

MR. LYONS: When I gave you these latter figures, \$11,000,000, I took the total assessment of the income; in other words, the yield which the tax would produce in the absence of the offset. The highest amount of revenue we ever actually derived was slightly less than seven million dollars, and that was during a war year when the assessment was over twelve million dollars. In other words, the offset provision wipes out from forty-five to fifty-five per cent of the income tax assessed. It is about half of it in normal years.

DOUGLAS SUTHERLAND of Illinois: I should like to ask Mr. Lyons whether they have not made a little excursion into the field of sur-taxation in Wisconsin and just to outline briefly to what extent it has gone, and whether he thinks that is likely to be a popular thing in Wisconsin, one that may be followed to dangerous lengths.

MR. LYONS: We have made an excursion into the surtax field, and the members of the tax commission do not look upon it with entire complacency. Of course it is a thing that can be abused. It originated in a law which provided a bonus for soldiers, in 1919. It was estimated that the amount of bonus appropriated would amount to about fifteen million dollars and that one-third of that sum should be raised from income and two-thirds from property, and the legislature fixed the rates to produce that result, as near as could be estimated in advance, but the rates fixed by the legislature actually yielded more than was estimated. The yield of the sur-taxes imposed upon income was approximately a little better than seven million dollars. But we had two bonus taxes—a straight soldiers' bonus tax of ten dollars a month, for every month in service, and an educational bonus providing for the same amount of revenue, to give returned soldiers who desired to continue their course in school, an opportunity to do so. They receive thirty dollars a month for each month while they continue as students. It was estimated that this law would require fifteen million dollars more, but it was also foreseen that this would not all be required in one year, so it was extended over a period of five years, and the tax for this purpose was one-fifth of the rates of the straight soldiers' bonus. The soldiers' bonus was all paid in one year and the other was spread over a period of five years. The soldiers' bonus has been paid, and we are entirely through with that as a matter

of taxation, and also practically through as a matter of payment. One installment of the soldiers' educational tax is levied each year, and that yields approximately one and one-quarter millions.

At the last session of the legislature there was a teachers' retirement fund provided, and that is also a sur-tax, so that we still have two surtaxes; the soldiers' educational tax and the teachers' retirement tax; imposed on income, over and above the normal income tax. It was also proposed to raise some of the money for the support of the university in this way, but that was defeated. There was still another proposed—in fact, it was more or less of a fad to be generous by means of surtaxes—let the other fellow pay it. But the only one that was enacted at the last session of the legislature was the teachers' retirement fund tax.

CHAIRMAN HOWE: The chair regrets to say it is after one o'clock now, and as we have another session this afternoon, we stand adjourned to the afternoon session.

[Adjournment of Session.]

## FIFTH SESSION

WEDNESDAY AFTERNOON, SEPTEMBER 14, 1921

CHAIRMAN BLISS: The meeting will please come to order. The subject for the afternoon session is taxation in a State Constitution. We are very fortunate in having with us today the gentleman who is the director of the Civic Federation of Chicago, and also a member of the constitutional convention of Illinois, a gentleman who has devoted a great deal of time and attention to the matter of taxation, and one of our old members. I take pleasure in presenting Mr. Sutherland, who will preside at the session this afternoon.

DOUGLAS SUTHERLAND, presiding.

CHAIRMAN SUTHERLAND: Ladies and gentlemen, we are to discuss taxation in a state constitution, and we are singularly fortunate in having to open the discussion for us Governor Albert O. Brown of the State of New Hampshire, not only because he is governor of the state and has had long experience with taxation as a tax commissioner, but also because he was called upon by the constitutional convention of his own state to preside as its chairman. He will open the discussion on the subject of constitutional revision in New Hampshire. It gives me great pleasure to call upon Governor Brown, who needs no introduction to this assembly.

GOVERNOR ALBERT O. BROWN of New Hampshire: Mr. Chairman and ladies and gentlemen: It is my purpose to give a brief account of the more or less recent efforts in New Hampshire to amend the proportional clause in the state constitution. That will involve a short history of the rise, progress and failure, if it be a failure, of the recent constitutional convention—I might say, the present constitutional convention, for it is still in existence, though not now in session; and I shall have to say a few words about conditions in New Hampshire, with reference to the taxation of intangible property. The whole thing lends itself pretty well to a paper, and I shall confine myself rather closely to it, in order that I may get through as speedily as possible, and with as little packing and following as possible.

Mr. Chairman and members of the conference: No property is taxable in New Hampshire unless and until it is so designated by



the legislature. But all so designated is assessable and that proportionally, that is, at the same rate in the same taxing district. Land and buildings and many classes of personal property, including corporate stocks in certain cases, have in the course of time been made taxable by statute.

It was early held, however, that "a taxation of shares at their appraised value would in fact be a double taxation of the property, once to the corporation itself, and again to the corporators, which would be unjust, oppressive, and unconstitutional." (*Smith v. Burley*, 9 N. H. 423, 427.) This principle extends to shares in foreign as well as domestic corporations. It is only when the property of a corporation in this state is not taxable directly to it that we can assess its capital stock. I have known but one such case. And it is only when neither the property of a corporation located out of the state nor its shares are taxed there that its stock becomes assessable here. I have learned of no such case. It may, therefore, be stated broadly that corporate stocks are constitutionally tax free in New Hampshire.

The act of 1772 added "money in hand or at interest, more than the owner gives interest for," to the classes of property previously made subject to taxation. This ancient statute well expresses the present law controlling the taxation of intangibles. "Money on hand," as several revisions have made the statute now to read, is held to include money on deposit, and "money at interest" to embrace that represented by bonds, notes, accounts and all other interest-bearing obligations whether reduced to writing or not. Receivables without interest and, for a very peculiar reason, deposits in savings banks, are not included.

The severity of the law is greatly lessened by the right to offset debits against money and interest-bearing credits. Shrewd men see to it that on the first day of April they are paying interest on a sum sufficiently large to balance their cash and interest-bearing receivables.

Nevertheless the law has operated to discourage investments in bonds during the century and a half of its existence, and especially for the last nine years, during which the sworn inventory requirements have been rigidly enforced. Much money belonging to trusts and to women that would naturally be found in underlying securities, has been put into the preferred shares of the railroads and industrial corporations. Large sums have gone into stocks preferred in name only and into common shares of little or no value. How unfortunate stock investments may prove, the recent past has illustrated.

The entire omission or exemption from taxation of the bonds of privately owned corporations which, with us, to a greater extent than any other security represent money at interest, although within

the power of the legislature, has found no favor with that body. Their classification, however, though beyond the power of the legislature, has been the subject of much discussion by the people and of occasional consideration by constitutional conventions, as also has an income tax. A coalition in the convention of 1912 procured the submission of an amendment empowering the legislature "to specially assess, rate and tax growing wood and timber and money at interest," and to tax incomes from the stock of foreign corporations and money at interest and to graduate the tax. But the amendment was rejected at the polls by a few votes.

In 1915 the amount of money at interest, not offset and therefore subject to taxation, chiefly represented by bonds, had shrunk to less than \$12,000,000 and the tax thereon to less than \$200,000. On the other hand the need of revenue had greatly increased. Therefore Governor Spaulding in his message to the legislature said, "I recommend that intangibles now taxed, be exempted from taxation, but that the revenue from all intangibles, including stocks, be taxed at the rate applied to all other property."

In pursuance of this recommendation a bill providing that personal estate liable to be taxed, should include money received during the year preceding the first day of April, as dividends upon shares and as interest upon money loaned, whether represented by bonds or otherwise, was framed, introduced in the house of representatives and referred to the appropriate committee. It of course exempted the principal of the money that produced the income to be taxed.

An opinion of the justices of the supreme court, to the effect that the proposed law was within the power of the legislature and if enacted would be valid, was obtained. (In re Opinion of Justices, 77 N. H. 611.) Public hearings were had. But the bill was defeated in committee.

Out of the agitation, however, came a call for a constitutional convention. Such a convention assembled in June, 1918, and, largely on account of the war, after a session of three days, adjourned with a resolution for an income tax amendment pending.

The convention reassembled in January, 1920, and passed the income tax resolution by a large majority of its votes. The proposed amendment was submitted to the people at the November election in that year. The vote was 49,018 for it and 32,173 against it. It therefore failed to receive the requisite two-thirds majority. The total vote having been light—only slightly greater than half of that cast for electors—and the interest in the presidential, gubernatorial, senatorial and congressional elections having been great, it was thought the amendment might have been overshadowed by the other matters involved, consequently, in the winter of 1921, the legislature having made an adequate appropriation,

the convention was again reconvened. In a session that lasted only one day the same amendment was submitted for a second time without debate and unanimously. At the annual meetings in the towns on the second Tuesday of March, last, and at special meetings in the cities on the same day it was disastrously defeated, by a vote of 21,580 yeas to 33,819 nays.

The convention was composed of superior men. In this state, membership in a constitutional convention is regarded as a great honor and the personnel is affected accordingly. In this instance the delegates, apportioned upon practically the same basis as the representatives in the lower branch of the legislature, exceeded 435 in number. It may be said, parenthetically, that there exists in New Hampshire—a state with only 440,000 people—a house of representatives which, with the exception of the British House of Commons and the national House at Washington, is the largest parliamentary body in the English-speaking world. Is there any wonder that we have not yet felt the need of either the initiative, the referendum or the recall? That the convention reached one result and the people another and opposite one, both by emphatic votes, may possibly be attributed to the difference in the quality of the electorates to which the question was referred.

The defeat of the income tax amendment was achieved, in an important degree, by a whispering campaign, inaugurated by some of those whose interests would be adversely affected by the tax and largely conducted by those who erroneously thought their interests might be so affected. In certain wards in several of the cities, where the people were practically all of foreign birth or immediate foreign extraction, the vote was especially heavy against the amendment. The voters were mostly operatives and laborers who lived in hired tenements. Of course they were not informed of the fact that in the absence of a new source of revenue the inevitable increase in the cost of government would be assessed principally upon real estate and would ultimately be for them to pay in proportion to their occupancy of the same.

There was no valid provision for publicity. The convention voted to contribute the pay of the delegates for the last session to that cause but the attorney general ruled that such action was not binding. Some speeches were made to thin audiences in favor of the amendment. Few if any were made on the other side. More of the newspapers supported the proposition than opposed it. The Grange was for it but organized labor, on the ground that wages might ultimately be reached, was against it. The federal income tax, with its vexatious returns, and the Massachusetts tax with its additional returns and increasing rate provided arguments, even for the fair-minded and intelligent, the force of which it was difficult to controvert.

It is idle to speculate upon what might have been the fate of a narrower amendment had one been submitted to the people. Some men of sound judgment think that one limited to the income from stocks and bonds would have been more likely to succeed. I do not partake of their confidence. People of influence in New Hampshire generally own a few shares of stock or have at least a bond or two which are now offset. An amendment directed toward dividends and coupons alone would have encountered their opposition as surely as the more general one did, and it would have been made effectual in the same way and to a degree sufficient to accomplish its purpose. In my opinion it was only by making a definite constitutional exemption of a sum large enough seriously to impair if not to destroy the usefulness of the amendment that ratification could have been accomplished, either in November or in March.

The result was cheerfully accepted by all good citizens, with a determination to make the best of the situation. Nevertheless, it cannot be truthfully said that the consequent and very great increase in taxes cast upon tangible property is being either joyously or quietly borne.

The convention is still in existence and can again be summoned by the presiding officer, but, as that officer, I can safely say it will not be summoned. Another, however, may soon be called. The constitution provides that the sense of the people as to revision and a convention for that purpose shall be taken at the expiration of every seven years. It will be appropriate and necessary for the next legislature to make suitable provision for such action. It will be five years thereafter before any statute in pursuance of an amendment can, in regular course, become operative.

New Hampshire is said to be the only state that still exclusively adheres to the convention system of amending its constitution. Numerous efforts have been made for a more liberal method, at least in the alternative, but to no effect. The state maintains an exceedingly conservative attitude toward the making of changes in its fundamental law.

It may transpire that the people cannot well wait for the operation of convention machinery, the speed of which they are unable to accelerate. In such circumstances can there be any possible relief? It is believed a very serviceable enactment in the nature of an income tax can be supported under the constitution as it is. The money derived from dividends and coupons is, according to the law of this state, property upon which a tax may be assessed. The same thing is doubtless true of incomes from other sources. Under the rule of proportion the rate would need to be that imposed upon other property in the same taxing district, and the assessment would in reality be a property tax and not an income tax. But the terminology of taxation is relatively unimportant.

At present the principal of property bears the entire tax burden to the exclusion of income. But so far as the constitution is concerned, the situation might be reversed. We might if we desired, discontinue the tax on all property except income and resort to that alone for the full support of government. The change would involve merely the substitution of income, as the subject of taxation, for all the property now taxed. The machinery now in use and methods now employed, would have to be changed but little if at all. Moreover, any classes of income could be omitted or exempted from all taxation, as certain classes of other property now are. There would, of course, in every district, be a tremendous decline in the valuation returned and a corresponding increase in the rate imposed.

This scheme of substitution, though perfectly constitutional, is of course impracticable in the cities and towns because of the difficulty of segregating enough income to bear, at any reasonable rate, the whole burden of taxation.

By foregoing its direct tax and relinquishing to its political subdivisions all right to the public service taxes now received and retained by it, the state, as a state, would divest itself of all property taxes whatsoever, and of course of all rates of taxation. There would be a consequent loss of revenue represented by the divested taxes. But this could easily be made good by imposing a new state property tax on income from any or all sources. As there would then be but one rate of taxation there could be no lack of proportion.

This plan would give the state an adequate and even desirable system of taxation. Flexibility would be one of its merits. The varying demands for revenue could generally be met by fractional changes in the rate of taxation. The tax would be easy to assess, as the amount of income could be ascertained from the federal return of the party taxed, or a duplicate thereof. And it would also be easy to collect, since it could always be taken from income without liquidating fixed or unproductive property, as is sometimes necessary under the present system.

The convention of 1918 and 1921, being in session for income tax purposes only, nevertheless interested itself in other matters. In addition to the amendment already discussed, six others were involved in the first submission. They authorized (1) graduated and progressive features for the present inheritance tax law, (2) conferred upon the governor the right to approve or disapprove separate appropriations, (3) permitted the reduction of the size of the house of representatives, (4) removed protection from those conscientiously scrupulous about bearing arms, (5) abrogated certain religious restrictions, and (6) allowed pensions for more than one year at a time. All of them failed of ratification. At the

second submission the last three propositions were omitted and the basis for the reduction of the house was changed. Again all failed.

Certain of these measures, such as the extension of the veto power to separate items in appropriation bills and the removal of the shield of conscientious scruples, as a defence against military service, were expected to be approved with practical unanimity. That they were not is probably due to the fact that those opposed to an income tax decided not to take the chance of careless and ignorant voting and so quietly passed the word to vote "no" and nothing but "no" on all the amendments.

The situation is serious. General property is paying all it can afford for the support of government. We have adopted a new and elaborate educational system which must be supported and strengthened. Our good roads must be improved and extended. Other needs must be met. And real estate which is now overburdened must be relieved. All things considered, a new source of revenue is imperative. But the only one in sight is the return from dividends, interest and personal effort. It, therefore, does not require great discernment to assert with confidence that before many years go by the people of New Hampshire will be compelled to accept either an income tax or a tax on incomes.

CHAIRMAN SUTHERLAND: After this interesting history of affairs in New Hampshire, with reference to revenue provisions in the constitution, the situation in New Hampshire being somewhat different from that in Ohio, possibly you would desire to discuss Governor Brown's paper at this time, and wait until later to hear the rest of the discussion. What is your pleasure?

SAMUEL T. HOWE: I should like to ask Governor Brown a question. I understood him to say that the only stocks that they tax in New Hampshire are stocks of national banks, is that right?

GOVERNOR BROWN: Yes, as a general proposition, that is right.

MR. HOWE: How do you tax the shares of state banks; how do you fail to discriminate?

GOVERNOR BROWN: We have no trouble with that. We have very few trust companies, and but one state bank in New Hampshire, and we are not much troubled by that. They are taxed on a basis somewhat similar to the savings banks, and they cause no trouble at all. We do not tax the shares.

MR. HOWE: Do you tax the national banks at a higher rate than the state institutions?

GOVERNOR BROWN: We do not; we are not permitted to by statute.

CHAIRMAN SUTHERLAND: Are there any other questions or any other remarks?

CAPTAIN WILLIAM P. WHITE: I should like to know if you have a franchise tax for corporations?

GOVERNOR BROWN: Well, yes and no. We have no separate technical franchise tax, but the property of a corporation is assessed at its full and true value, including the value of the franchise, if the franchise has any value. If the franchise has any value, it is taxed as a part of the property. In other words, the property of a railroad is taxed with reference to its franchise as well as with reference to its other qualities.

CHAIRMAN SUTHERLAND: Are there any other questions?

WILLIAM A. HOUGH of Indiana: I should like to ask Governor Brown how they arrive at the value of the shares of stock of the banks.

GOVERNOR BROWN: That is arrived at by considering the surplus of the banks and all their property; their capital, their surplus and their undivided profits.

MR. HOUGH: That does not reach the market value of the shares of stock though, does it?

GOVERNOR BROWN: Well, no, not exactly that, but the cashier of a bank is required to return to the assessors or the selectmen, as the case happens to be, the number of shares of the capital stock and the surplus and undivided profits, and from that basis an assessment is made, but the stock cannot be assessed for less than par.

MR. HOUGH: You do not take into consideration the earnings of the bank in arriving at the assessable value?

GOVERNOR BROWN: Yes, we take the capital and the surplus and undivided profits, which of course would include all the earnings.

MR. HOUGH: No, not if they are all paid out in dividends.

GOVERNOR BROWN: Why yes, wouldn't it? — whether the earnings are paid out in dividends or not, they are earnings just the same.

CHAIRMAN SUTHERLAND: If you will pardon the interruption, this question now being raised does not seem to be germane to the topic of the afternoon, which is taxation in a constitution, and this is rather statutory. I think you have no constitutional action on the subject. We have rather a long program, and that might

come up in the subject of bank taxation. We will now proceed to the general discussion, taking up first Ohio. The Honorable Clarence D. Laylin, Special Counsel, Attorney General's Department of Ohio, will lead the discussion.

CLARENCE D. LAYLIN: Mr. Chairman, ladies and gentlemen: You will note that the printed program has been departed from in the order of the presentation of the general topic of the situation in Ohio. In Ohio we have learned to believe in team work, and Mr. Dyer and myself in collaboration have decided that the topic could better be worked out if the order on the program were reversed. With that explanation, and apology, and with appreciation of the cooperation of the chairman, I will say that my part of this presentation will consist of an attempt to sketch the historical background of the situation in which Ohio now finds herself.

We have in Ohio a constitutional provision, or set of provisions, relating to taxation, which, I am constrained to believe, limit the legislative power on that behalf more strictly than any other legislature in the world is limited, with respect to its control over the subject of taxation. The basic provision of our constitution is that which relates to property taxation; and it is about that provision that the struggle which I am going to try to describe as briefly as may be possible, has waged. The provision is to this effect, that laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, at the true value thereof in money. Certain exemptions, both automatic and permissive, are provided for, but they are not of importance in this connection.

If you will retrace in your minds the language which I have just recited, you will find in it, I think, three ideas: first, that all these things shall be taxed as property, that is to say, moneys, credits, investments in bonds, stocks, and so forth, are placed in the same category by this provision with tangible property, both real and personal; the second idea, which you will discern in it, is that that taxation shall be *ad valorem*, that is, according to the value in money of the property which is taxed. We are not permitted to tax, therefore, by the expedient suggested by Governor Brown as applicable perhaps to the New Hampshire situation. We could not tax the income arising from property as property, but we must tax all property according to its value. The third idea is that this taxation which must pertain to all property and be *ad valorem* with respect to all, must be levied by a uniform rule. That means of course that the rate must be uniform in each taxing district. There are other constitutional provisions in Ohio relating to indirect taxes, **taxes other than property taxes**. They



are of more recent origin than this fundamental provision which I have described, and are not of great importance. Some of them were adopted to obviate certain decisions of the supreme court, respecting the power of the legislature to adopt progressive inheritance taxes, for example. Others constitute mere declaratory provisions, embodying the results of other decisions of the supreme court, which had held that the first provision which I attempted to outline was merely a limitation on the power of the legislature with respect to the taxation of property and was not intended to cover the entire field of permissive action by the legislative body; so that under the general grant of legislative power the general assembly of our state was at liberty to tax franchises and privileges, including inheritances and the like.

Coming back now to the property tax provision, which I have described, let me say that it goes in Ohio by the nickname of the "uniform rule", and by that name I shall find it convenient to refer to it hereafter, although, as I have said, it is really a set of three rules of uniformity. When it was adopted, Ohio had had a rather sad experience under an open constitution; at least the people of 1851 were convinced that the open constitution on the subject of taxation had not produced satisfactory results. That date, 1851, marks a period when Ohio was an agricultural state, predominantly. Since that time the character of the state has changed, as you all know. Since that time, too, the activities of government have expanded, as many have remarked today, and needs for revenue have increased. The taxation problem on that account alone would have become pressing in Ohio in the course of time. But other factors, which have doubtless occurred to some of you, entered into the situation in Ohio and gave rise to the problem which has troubled us for so many years. At the outset it was conceived that the general property tax under this triple rule of uniformity was to be practically the sole source of public revenue by taxation, and so were our statutes for a long period of time, say, down to the 80's or 90's. But the state rates produced, by a process which I need not describe to you, the general result of juggling in valuation and rates. Perhaps I should describe the result in this way. Suppose, as was the fact, that a mill rate—expressed in mills—was levied on the grand duplicate of taxable property of the state, to be distributed among the school districts of the state in proportion to their respective school needs, as indicated by the enumeration of school youth; it soon became apparent to some that if the valuations of real property were low in a given county, that county would profit through the distribution. The result was that such low valuations came to pass. Forty, fifty, sixty per cent was the standard. Of course those who initiated that program had no idea of depriving their localities of necessary

revenues, and the result was that the permissive rates of taxation for local purposes soared high. So we had high rates and low valuations. Of course the intangibles, as we refer to them in Ohio, are not the subject of estimation or guess-work, in respect to their values. A gilt-edged bond has a market value, and if it is taxed at all *ad valorem* it will be taxed according to that value. The result was that the rates which were produced by this juggling of real estate values were too high for the intangibles to bear, and it followed from that of course that tax-dodging on the intangibles came about in Ohio in the perfectly natural course of events. This situation gave rise to the first effort to amend our constitution in respect of the so-called uniform rule, which took place in 1889. At that time and for some years thereafter, though amendments could be proposed by the legislature, without the necessity of calling a convention, as in New Hampshire, yet they had to be approved by a majority of all those voting at the election at which they were submitted, and they could be submitted only at a regular election, when other issues were to the fore. The first proposal to amend the constitution which was submitted in 1889 was radically the opposite of the constitution which we had. It would have enabled the legislature to adopt a diversified scheme of taxation. It failed to receive the constitutional majority. The attempt was repeated in 1893, I think, with the same result. Meanwhile the state had embarked upon the policy of taxing public utilities, specially, and other forms of privilege, and had begun to look with favor upon the then favored policy of the separation of the sources of revenue, by reducing to the point of extinction the state rate. Things went on in this way until the first decade of the present century. The situation was becoming more and more acute; the valuations of real property were becoming more and more unequal throughout the state; the amount of intangible personal property that was escaping taxation increased apace; finally another attempt was made in 1903. By this time the proponents of reform had become cautious. They deemed it the better part of valor to offer an amendment which, instead of attacking all three of these ideas which we found in the Ohio constitution, would attack but one of them, and while still requiring all property to be taxed would permit that taxation to be by a rule other than a uniform one, that is to say, would permit the classification of properties for taxation purposes. This is what I suppose would be called the classified property tax, or as we call it in Ohio, "classification". As I understand it, the reformers adopted this tack as an expedient, not because they believed in it as an ideal, but because they thought it could be more easily achieved than to go on putting forward completely radical amendments. The effort in 1903 failed. Again in 1906 or 1907 the governor of the state,

acting in cooperation with the legislature, appointed an honorary commission to investigate the subject. At this time it seemed as if the time was ripe for another effort to amend the constitution, because the legislature had passed a law authorizing political parties to endorse constitutional amendments, and directing that when that was done the constitutional amendment should go on the party ticket; so if you should vote a straight ticket—and in Ohio people are accustomed to voting straight tickets—your vote would count for the amendment which your party had endorsed. That, it was thought, would enable tax reform to succeed, because in the past it had always received a majority, but had gone down to defeat because it had failed to receive a majority of all the votes cast at the election. This honorary commission recommended that classification be adopted, that is, that the constitution be amended so as to permit the classified property tax. One of the two political parties endorsed the proposal which was made by the legislature. The other gave general approval to it in its resolutions, but failed to endorse it officially, so that it went on one of the two tickets. Unfortunately it went on the wrong ticket and the result was the same as it had been; although the proposal received a majority of the votes cast, it did not receive a sufficient majority under the constitution to amount to ratification by the electors.

Again in 1912 the time seemed ripe. The agitation for reform that had characterized all these campaigns seemed to be bearing some fruit, and the time was approaching when at periodical intervals under our constitution a convention, to revise the constitution, might be held, if the electors so ordered. A vote was taken on whether there should be such a convention or not and the electors ordered a convention, which met in 1912. Unfortunately again for the reform movement, the issues that were to the fore in 1912 had nothing to do with taxation. Those were the days of the progressive movement and the watchwords of the campaign in which the delegates to that convention were elected were such things as the initiative and referendum, the recall, social justice, and so on. Only in a few districts were delegates pledged to any definite stand on the subject of taxation, and those districts were mostly rural districts where, for reasons that I wish to mention but have overlooked so far, the sentiment was strong against any change in the constitution, so that the delegates so far as taxation was concerned were pledged against any change. The result of this was that although the output of our constitutional convention of 1912 has been justly looked upon in general as progressive, if not radical, its efforts, so far as taxation was concerned, were decidedly in the opposite direction.

Let me speak briefly of the reason why in the agricultural

regions of our state at that time and to a certain extent down to the present time there has been opposition to constitutional change on the subject of taxation. One of these efforts which I have mentioned—that of 1903—occurred at a time when the Honorable Tom L. Johnson, formerly mayor of Cleveland, was very prominent in state politics. He was a candidate for governor about that time. Mr. Johnson was an enthusiastic advocate of the single tax, and his personality in and of itself injected the single tax into Ohio politics. There was a tremendous reaction against the single tax in the agricultural regions of our state and among our farming population, and when the friends of reform invaded the Ohio state grange about that time and asked for the endorsement of the classification amendment, the single tax spectre arose immediately to plague them, and the result of the effort to pledge the grange at that time to the support of the classification idea was a disastrous defeat, personally, to those leaders of the grange who undertook to advocate its cause.

I must hasten and mention the next unsuccessful effort to amend the Ohio constitution, which was in 1915. The friends of reform did not come away from the constitutional convention of 1912 with hands entirely empty, because the people ratified an amendment proposed by that convention making it easier to amend the constitution, by making the vote necessary to carry an amendment merely a majority of those voting upon the proposition submitted, and by making it possible also to initiate an amendment by the circulation of petitions, as well as to secure its submission to the electorate through the legislature. This effort of 1915 was an initiated amendment. I am going to have to pass over something that for the sake of clarity really ought to be elaborated, in speaking of this 1915 proposal, because it had in it a new thing in reform proposals in Ohio, namely, a proposal to incorporate in the constitution a limitation on the aggregate rate of taxes that might be levied on property. The thing I will have to pass over is our locally famous or infamous measure known as the "Smith one per cent law" in Ohio, which was enacted in 1911, and which in 1915 was supposed to be very popular. As a matter of fact it may still be popular in Ohio, but it does not work. The average rate on property in Ohio in 1920 was about nineteen mills, and we are supposed still to be governed by the so-called one per cent limitation law. These figures will show you that the limitation law does not work. But, it was supposed to be popular in 1915, and the proponents of reform incorporated it in their amendment which was initiated. It failed.

The next was in 1918, another initiated amendment. This had no limitation feature in it; it was similar to those that had gone down to defeat previously to the one of 1915. This time the pro-

posal received a constitutional majority, but the bad luck that had characterized the reform movement still hung about its neck. At the same election at which this proposal was submitted, there was submitted another proposal, originated by the legislature, authorizing the elimination of the supposed double taxation which results from the taxation of a note secured by a mortgage, and the premises or property by the mortgage of which the note is secured. For purely formal reasons, this amendment repeated, of course, the old language of the constitution as it existed. It also received the approval of the electors by a larger vote than the classification amendment. The question arose as to whether both could stand together, or whether they were in conflict. Three out of seven judges of the supreme court were of the opinion that there was a conflict and that the measure which had received the largest vote of approval must prevail. One judge did not hold that view but found certain irregularities in the form of the classification amendment which in his mind invalidated it. The result was that the supreme court held that the classification amendment, though victorious at the polls, had not yet gone into effect.

In 1919 the legislature met before this decision was announced and while the case was still under advisement by the court. Other revenue problems had arisen in the legislature and the session promised to be a very notable one and was a very notable one from the standpoint of the development of Ohio's taxation system or lack of system, as the case may be. I must confine myself to the subject and deal with that session briefly by saying that it sought to put an end to the uncertainty in the popular mind and in the mind of the legislature itself in respect to what the state's fundamental taxation policy really was, by submitting another amendment. This was done. The campaign was very actively waged. Organizations were formed both for and against the amendment, and it went down to defeat. The situation is strikingly similar to that described by Governor Brown a moment ago, as far as the income tax amendment in New Hampshire was concerned. The legislature of 1919 had recessed, pending the holding of this election. It was generally understood that some sort of reform must happen in Ohio. Our cities were approaching bankruptcy; so were our schools. I cannot go into detail; but radical revision of our taxation laws seemed to be called for very loudly. After the election had been held, the assembly reconvened and sought to enact an income tax law—sought to do other things as well, but I mention that because of the discussion which you have had with respect to income tax legislation. The income tax law was carefully prepared by the joint committee that had initiated all the legislation of that session, under the supervision of Professor Lutz. It failed by a narrow margin, and the reason it

failed was this—I must mention first the declared reason, and then the real reason. The declared reason was that to tax the income derived from intangibles on top of taxing the intangibles themselves according to value, would be double taxation and confiscatory. The real reason was of course that any income tax law that is effective must contain provisions for information at the source, and information once obtained of course would be used naturally to uncover intangible property that had been escaping property taxation. You can see that, of course. The financial interests rallied very strongly against the income tax bill and it was defeated. The legislature gave up in disgust when that was done and sought to meet the situation by a series of temporary expedients. We are still in the era of temporary expedients in Ohio—expedients designed to avoid the bankruptcy of some of our local subdivisions. After that legislature adjourned, an organization of citizens, representing the chambers of commerce, representatives of the grange, and so on, came together informally at the call of the Chamber of Commerce of Cincinnati, in the hope that something could be agreed upon as the basis of action. Certain things were agreed upon having to do with the continuation of this policy of temporary expedients and also having to do with the enactment of a very much needed debt limitation statute in Ohio. I have not had time to go into that and shall not mention it further. The things agreed upon by this conference of citizens were quickly put through the legislature, which met in 1921, giving an earnest of what can be done, even in Ohio, when there is unofficial agreement of the interests that ought to agree to a thing of this sort, instead of general indifference and “passing the buck” (which is a phrase that obtains in Ohio politics) to the legislature. But no study was given by that conference to constitutional reform. Instead, the committee of that conference appointed to deal with that subject recommended a larger convention. That larger convention has never been held.

Now come the most recent developments which lead up to Mr. Dyer's paper, and I will try to sketch them out briefly. When the bills upon which this conference had agreed were up for public hearing in the house of representatives of our legislature early in 1921, there occurred a rather dramatic episode. The master of the state grange, who had theretofore been found with the opponents of proposed constitutional amendments, prominent in the organizations that had been formed for that purpose, arose in that hearing and avowed the determination of the interests which he represented to cooperate towards securing an effective enforcement of the uniform rule, and if that should be found impossible, he declared the readiness of his constituency to cooperate toward constitutional reform that should be fair to all. Everybody recog-

nized this as a precipitation of the issue. The governor of the state immediately appointed a committee of citizens to frame a proposed amendment. This committee sat for several weeks gratuitously and worked out such an amendment, making its report to the governor, who transmitted it to the legislature. There was an unfortunate element in that, because some of the members of the legislature were inclined to resent what they looked upon as executive interference with their prerogative, and I should say that nothing actually came of the effort of that committee. Nevertheless, something is going to come from the efforts of that committee, in my opinion. While several proposals, some of them based on that committee report and others not so based, were considered by one or the other of the two houses of the assembly, none passed, so as to be submitted to the electors, and there is pending in Ohio, therefore, at the present time, no amendment for submission in November. It is too late now to initiate one and none will be initiated, but there are very hopeful signs, with which Mr. Dyer will deal, that we are about at the breaking point in our effort in Ohio to obtain constitutional reform.

I have tried, ladies and gentlemen, to sketch in the time allotted a history that encompasses about forty-two years in Ohio. We have been in a ferment all that time on the subject of taxation, as affected by our constitution. The clouds are just beginning to break and while I have not given it to myself to deal with the subject matter of what seems likely to come out of the conferences that are now taking place on the outside of the legislative halls, I feel sure that within a short time you will hear, if you are interested in constitutional reform, that something has happened in Ohio.

CHAIRMAN SUTHERLAND: In dealing with fundamental questions of state revenue, it is always important to know what the farmer thinks about it, and what he thinks is desirable. The farmer represents a conservative element in the rural districts—the largest property-owning element that we have. In Illinois on this question the farmer has been both for and against classification. In 1916, led by what was then our chief farmers' organization, and also a sort of a state department, with bureaus in every county, and also by the state grange, they were for classification, and our rural counties gave a proportionately heavier affirmative vote than did the urban communities. Before the constitutional convention a new farmers' organization had grown up, the county farm bureau organization, a very powerful organization, with new leadership. They were partially taken away from the idea of classification, somewhat by outside influences, and some of their leaders appeared before our constitutional convention committee on revenue and urged against classification, while some of the older leaders of the

other organization, including the Grange, were for it; so we in Illinois, as the rest of you in your states, will be particularly interested in the views expressed by C. A. Dyer of the Ohio State Grange. I have great pleasure in introducing Mr. Dyer.

C. A. DYER of Ohio: Mr. Chairman, ladies and gentlemen: I have no paper for you. I did not know what Mr. Laylin was going to say to you. I represent, besides the Ohio State Grange, the Ohio Farm Bureau Federation, and quite a lot of city folks. In fact, the folks at home in Ohio are beginning to find out that they are in the same boat, whether they live in the city or country, and we are establishing a community of interests in Ohio, to demand that real estate shall receive fair treatment in taxation, which it is not receiving now. Real estate now owned by private interests in Ohio bears a little over sixty per cent of the tax there, the public utilities somewhere about fourteen or fifteen—I have not looked it up in the last year; and the public utilities are seemingly willing to sit down and be robbed; they have never yet gotten into the fight with us to get justice. They are paying more taxes in Ohio, in the city and in the country, according to the amount of property they have, than we real estate owners are paying.

We have found out in Ohio that we have to do something else besides meet in committees in our rural organizations. We have found out that we shall have to go into the cities eventually and convince the fellow that owns a home—or that rents a home either—that he pays the tax, and he doesn't pass it on to somebody else. Up in Cleveland, about eighty per cent of the people are renters in the city proper, and those folks have been passing all sorts of issues of bonds. These renters did not realize that they were taxpayers. I verified this belief by going around to them and inquiring. It seems necessary that this National Tax Association evolve some scheme to convince the general public, that thinks it does not pay any tax, that it pays tax-plus. I think that would be a solution for a good many of our problems, and that we shall get economy quicker that way than in any other.

We are beginning to find out in Ohio that the interests that have clashed there all the time, that have been fighting each other, can get together. We farm folks thought two or three years ago that the bankers and fellows of that sort wore horns, I guess. We found when we got around the consultation table with them that they were ordinary men just as we were, and were more willing "to give and take" than the farm folks were. We rural folks have not learned to compromise yet and get part of what we wish when we cannot get it all.

In regard to open classification, I was fortunate enough to go through Kentucky and investigate classification there. We went into Pennsylvania and New Jersey, and we were convinced that



classificationists were trying to "put it over" on Ohio real estate. We found in Kentucky that they were losing money by classification and were not getting more substantial justice than we were under our so-called uniform system. We were getting over eight per cent from our direct tax on intangibles in Ohio, which is more than any other state gets. I don't think there is any justice in our so-called uniformity or in the taxes we collect, because the people that pay are honest men who won't lie, ignorant men, who do not know how to lie, and dead men who cannot lie.

I think we can devise some way, and we are going to try to do it in Ohio, to get the matter of taxation in a simple way back to the ordinary citizen. The folks on the farms understand taxes a great deal more than they did. The trouble is going to be to reach the urban population. Our problem, with the different interests in Ohio, is greater than in any other state because these interests are so evenly balanced. Our great interests, and their legislative representatives, I think are the most highly "educated" in the United States. Some of these interests are here today. I don't think anybody can put anything over on them. But they have found out that what they have been doing is ineffective. They have been getting nowhere by trying to put all the tax on the other fellow. I think when folks in all the states devise some scheme of getting the interests together for a fair deal, we will get somewhere in the matter of taxation. The trouble with our "uniform rule" about which Mr. Laylin spoke to you is, that it has not operated in Ohio for a great many years. This "uniform rule" says that "credits shall be taxed". It was not very long after its adoption until the people in business went to the legislature, and persuaded that body to violate the plain provision of the constitution. They tax credits in Ohio now, after deducting debts. The constitution says "stocks shall be taxed", and we tax only foreign stocks. We do not tax home stocks at all by any uniform rule. I do not know how to reconcile that with the constitution. But what is a constitution between friends? We defeated classification in 1919 because the legislative program of the farm organizations contained four things. We wanted four things then and we yet intend to get those four things. Probably some of those are illogical. Probably some of them won't suit you tax theorists. I don't think they will. Later I am going to read the amendment we have agreed upon in Ohio.

Last year in Ohio the cities and counties paid out in salaries for personal service sixty-four million, eight hundred and some thousand dollars. That money was not taxed. Those fellows enjoy "government" in Ohio for nothing. They have been educated, most of them, for nothing, through the public schools and state colleges, and so they cost the state more than anybody else. They

are fellows that come to our legislature and get what they want. They ought to pay something for the education which they have received and for the privileges which they enjoy, and for the money that they get out of the state. They don't do it. And we have in Ohio, of course, a great number of other income-receiving people—I have no dea what their incomes are—who should pay taxes also. We have other thousands of people in our cities who want to build homes. One real estate man in Cleveland told me that he was satisfied that there were ten thousand lots there that were paid for, and the people want to get money to erect homes on those lots. Now, in my mind, the most important thing in the United States is a home—the most vital thing is a home—and, if we are going to give anybody any privilege, it ought not to be a railroad or a corporation; it ought to be somebody that builds a little home some place and raises the future citizens of this country. If a man can secure a house, and get his feet planted in his own ground, and enough men own homes, we shall never have any Bolshevism in the United States. We shall have secure and orderly government and happy citizens; and that is the main-spring of the thing we are trying to do in Ohio. The man, in order to build his home, wants to borrow money and he cannot do it. Tax-free stocks, tax-free bonds, pay more to the investor than money loaned on a mortgage. Home-builders in Ohio, on account of our rotten tax system, are forced to go to the second mortgage man and pay probably eighteen to twenty per cent for money each year. We want to devise some way in Ohio so that we can have money flowing more freely in the direction of the home, more freely in the direction of the farm, and we think we can do that by an amendment which we have devised. Now, this amendment has been agreed upon by committees representing all the great interests in Ohio except labor and except the public utilities, and the public utilities are going to be keener for it later than anybody else.

This matter of single tax is a serious problem in our state. Those single-taxers are working in the cities among the laboring men. A banker told me if it was submitted in the City of Cleveland, the largest city in our state, that the single tax idea would carry at the polls. So we farm folks have reason to be afraid of the single tax and its various entering wedges.

I want to read this amendment to you and I want to ask your committee on resolutions or this convention to pick holes in it, pick all the holes you want to in it, help us out in changing it, if there is some way we can change it for the better; but you cannot take the tax limitation out of it. We won't stand for that. It may not be logical, but we insist upon your retaining it.

Our program is: We want first a debt limitation; we want it

written in the constitution. The interests of Ohio agreed to that, and they took an amendment to the legislature. The legislature did not submit it, but it will be submitted. We did not want to submit it this year because we have a poll tax amendment submitted, and as far as I can learn, we are not in favor of the poll tax. In Ohio, people who formerly paid the poll taxes were people who were paying the other taxes.

We want first, the debt limitation which will limit the taxing officials to a certain per cent of the duplicate for debt purposes; we wish another limitation that the people shall not go in debt beyond a certain extent. We want Ohio bonds to be good over in New York and Boston, and they are getting a bad reputation over there, because we found out in our investigations that the officials and the people themselves at special elections have taken on a debt of over five hundred million dollars. Some cities are bankrupt, if a city can be bankrupt. We had one city that took eighty-six and a fraction cents out of every dollar of its year's taxes to pay its sinking fund and interest, and had thirteen cents for revenue. We have two cities, the whole year's taxes of which have been taken to pay water rent; and in another case to pay light rent, and they have nothing to run the cities; I do not know how they are operating; they probably issue bonds for current expenses. This debt limitation law is necessary, because they are robbing the sinking funds to pay current expenses. We have stopped that by a debt limitation law, but we must write it into our constitution. What was the matter with the Smith limitation law? That was evilly designed. I know the man who wrote it. That was a one per cent tax limitation, with the idea that it would not furnish revenue and that bonds would have to be issued for current expenses. And there were five hundred millions of them. The Smith limitation law was written for the very purpose of getting the state in debt. Then, we want the tax limitation. Why? Because if we do not have a tax limitation on real estate in Ohio—on the homes and farms—the legislature will follow the line of least resistance and keep taxing the thing that is already taxed. We have gone over the state, and Professor Lutz assisted—we have gone over years and years, and found a point that will give sufficient revenue for the cities, and, supplemented by some of these other taxes, we shall have sufficient revenue. The amendment says to the legislature: "You can go so far with this home or this business property or farm, and if you want more revenue, then you can go some place else and get it."

We want the budget system. We have a budget commission of three county officers in Ohio. On account of the rate levy being in mills, every official board that levies money levies all the mills it can, and they send them into this budget commission, and the

budget commission takes a paring knife and whittles them all down, puts them inside of the limitation; and the unfortunate thing is, these county officers and the school people are pretty powerful in Ohio, and the result is that the cities have been starved to death, forced to run on two or three mills. This imperfect budget we have is the cause of part of our troubles in Ohio.

We shall be satisfied with nothing less than those four things—debt limitation, tax limitation, income tax and budget system, and we are going to keep on fighting and educating our folks in Ohio until we get those four things.

I will read the amendment to you, the one part you would be interested in, and if it is permissible, I should like to have some kind of action taken by your committee on resolutions, Mr. Secretary and Mr. President.

SECRETARY HOLCOMB: Hand in a resolution.

MR. DYER: I should like to take a word of encouragement back from this convention.

[Reading]:

“Section 2. Within the limitations provided in this article, taxes shall be levied upon all property according to its true value in money, and upon incomes and inheritances; but the Legislature may wholly or partially exempt any property from taxation according to its true value in money if the income from such property is taxable, or may wholly or partially exempt the income of property from taxation, if the property producing the income is taxable according to its true value in money. The aggregate rate of taxation of property according to value, including state taxes, shall not exceed fifteen mills outside of municipal corporations, nor eighteen mills, within any municipal corporation, but laws may be passed authorizing additional rates to be levied in any taxing district for specific purposes and periods, upon the approval of a majority of those voting at a general November election in such district. No state tax in excess of one mill in the aggregate shall be levied in any one year on property according to its true value in money.

“All bonds at present outstanding, issued prior to 1913 of the State of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may by general laws be exempted from taxation; but all such laws shall be subject to alteration or repeal.

"The General Assembly shall provide for a budget system for the raising and expenditure of local revenue, and may provide for county boards of apportionment to secure the equitable distribution of tax levies among overlapping taxing districts, which boards may be elected or composed of persons holding any designated county, municipal or school offices within the county."

We found out in our investigations that as the state rate went up the counties and the taxing districts tried to creep from under. They have a tendency to lower the values, and we do not want that to occur again. We want to limit the state rate as low as we can, so the state will have to go some place else than to real property to get its money.

OSCAR LESER: Aren't you going to the old thing that you had in Ohio?

MR. DYER: The reason we did that is: In one county in Ohio last year eighty-seven thousand dollars' worth of bonds were issued and nobody but the election officers were at the polls.

MR. LESER: That is their privilege, to stay away if they want to.

MR. DYER: Those people when they go into the treasurer's office next September will growl about their tax.

CHAIRMAN SUTHERLAND: Honorable John H. Fertig of the Legislative Reference Bureau of Pennsylvania will now give, I believe, a broader cast to the discussion, which has so far centered upon conditions in two states. It gives me great pleasure to introduce Mr. Fertig.

JOHN H. FERTIG of Pennsylvania: Mr. Chairman, ladies and gentlemen: This is the first time I have been privileged to attend a conference of the National Tax Association. As I have been listening to the discussion from day to day I have been impressed with a fact of which I was unconscious before, and that is the difference between the system of taxation in Pennsylvania and those of the other states. When I say difference in the taxation systems, I refer of course to the system of state taxation.

Including revenues that we derive from motor vehicle licenses, we are today collecting a revenue of approximately seventy million dollars a year for state purposes, and we collect all of that revenue without any burden upon real property or personal property, or without any income tax. I am not here to discuss the section under which Pennsylvania collects this revenue, but if you are interested, we shall be glad to have you come down to Pennsylvania and see us, and possibly we can offer something to you which will help you to fill your coffers in that painless method which was hoped for by several speakers the other day.

VOICES: Tell us now.

MR. FERTIG [continuing]: The secretary of this association has requested me to discuss briefly the Pennsylvania constitutional provision with regard to taxation. The present clause of the Pennsylvania constitution is as follows:

"All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private corporate profit, and institutions of purely public charity."

This constitutional clause has now been in force for forty-eight years, and no amendment thereto has been submitted to the people in that time. Practically our entire system of indirect taxes for state purposes has been developed under this provision, and in a large measure our systems of local taxation. I believe I express the opinion of a majority of our citizens when I say that in the main this provision has been entirely satisfactory. True, inequalities have frequently resulted, and in some instances taxation may be considered burdensome, but the inequalities are due to the errors of individuals, while our present hardships can be easily removed without disturbing the provision.

Before touching the question of additions to this clause, I wish to refer briefly to the effect of the present clause as it has been adjudicated by our courts in various cases. The words "all taxes" as used in the constitution, have been construed to include all manner of taxes, whether for state or for local purposes, and in Pennsylvania embrace inheritance taxes (*Cope's Estate*, 191 Pa. 1). On the question of uniformity, our courts have recognized that absolute equality of taxation is difficult of attainment, and that an approximate equality is all that can be reasonably expected. It has been held frequently that if there is a substantial uniformity, there is a compliance with the constitutional provision. The courts have no power to pronounce a tax law unconstitutional on the mere ground of injustice or inequality.

The words "upon the same class of subjects" are to my mind the most important words of the whole provision. These words vest in the legislature the power to classify subjects of taxation and to provide distinct rates for each class. This right to classify subjects in matters relating to taxation was recognized in Pennsylvania for years prior to the adoption of the constitutional clause. The effect of this clause is not to require uniformity of taxing laws, but uniformity of taxes upon the same class of subjects. The courts have laid down the rule that classification is to be

made according to some reasonable and practicable rule drawn from experience, which will present gross inequalities in the burdens of taxes. Thus, for instance, for state purposes we have classified the capital stock of corporations, exempting from the tax so much of the capital stock of any corporation as is actually used in manufacturing business, except in the manufacture of liquors. Corporate loans of private and municipal corporations have been placed in a separate class. Foreign insurance companies are held to be distinct from domestic insurance companies, with the result that foreign companies are taxed at the rate of two per centum upon gross premiums collected in the state, while domestic companies are taxed at the rate of eight mills on their premiums. Venders of goods, wares and merchandise may be classified into wholesale and retail. In the matter of the taxation of real property, built-up and suburban or rural property have been classified and different rates applied to each, and in our cities of the second class (Pittsburgh and Scranton) there is now in existence a modified form of the single tax theory, recognizing a distinction between land and the improvements thereon. In second class cities the rate upon the improvements is to be reduced year by year as compared with the rate upon the land, until the year 1925, when the rate upon the improvements is to be one-half of the rate upon the land.

Many other classifications might be referred to which have been recognized as valid by our courts, but the ones cited are sufficient to instance the power which reposes in the legislature to raise revenue from distinct classes of subjects, without being hampered by constitutional restriction.

On the other hand, there is a limit to the power of the legislature in matters relating to the classification of subjects. I shall refer briefly to several which have come to our attention within the last few years, and which give rise to the necessity of additions to our constitutional provision. In 1897 the legislature adopted a tax on direct inheritances. A tax on collateral inheritances has been in force in Pennsylvania since 1826. When the act of 1897 on direct inheritances was adopted an exemption was granted in the case of estates of less than five thousand dollars in value. I presume at that time it was the consensus of opinion that inheritance taxes were not taxes in the ordinary sense of the word as used in the constitution, and therefore were not required to meet the test of uniformity. This I understand to be the rule in most jurisdictions, but following the passage of this act the courts held that inheritance taxes were taxes within the meaning of our constitutional provision, and must comply with the rule of uniformity. On account of the exemption, the act of 1897 was held unconstitutional. The courts refused to go so far as to permit

a class within a class, that is, first to classify inheritances into direct and indirect, and then to establish a class within the direct class determined by the amount of the estate. It was not until 1917, twenty years later, that the direct inheritance tax was adopted in Pennsylvania, and this tax is now payable on every estate, regardless of the amount involved, with the result that in smaller estates hardships are frequently occasioned, and in some instances the tax is so small as not to warrant its collection.

Another improper classification to which I may direct your attention is that of anthracite coal. For years anthracite and bituminous coal have been classified for the purpose of regulating mining conditions. This classification has been approved by our courts, because the conditions under which the several kinds of coal are mined are so different that a uniform system was not adaptable. In 1913 the legislature levied an advalorem state tax on anthracite coal, and provided that one-half of the tax realized was to be returned to the communities in which the coal was mined. The courts refused to permit this classification, saying that for taxation purposes no real distinction existed between anthracite and bituminous coal; both were fuel. The courts also at this time announced the rule that the test of uniformity in the constitution was to be applied not only to the tax itself, but as well to the distribution of the proceeds of the tax, and that the legislature might not arbitrarily take part of the proceeds and distribute it to favored communities where the coal was mined. I have referred specifically to these cases for they represent taxes for which special provision should be made in our constitution.

I am of the opinion that the phrase "within the territorial limits of the authority levying the tax" might be safely eliminated from our constitutional provision. It is possible that in some states this clause may have some force, especially in those states where local and special legislation is permitted, or where the general property taxation system is in force. This phrase has been defined in several jurisdictions as follows: "But we think the words 'within the territorial limits levying the same' mean the school district in which taxes are to be used" (*In re School Code of 1919*, 108 Atl. 39, Del.). "What is meant by the words 'territorial limits' in Section 168 of the Constitution, is the actual boundaries of each such subdivision as the same are fixed by law" (*Robinson v. Norfolk*, 6 S. E. 762, Va.). It seems clear that the phrase contemplates only the individual municipality in which the tax is levied, and not a class of municipalities. It has been suggested that if the phrase "within the territorial limits of the authority levying the tax" were eliminated from our constitution, and the provision left to read, "All taxes shall be uniform upon the same class of subjects, and shall be levied and collected under general law," a law



such as we have in our second class cities, and to which I referred before, would amount to a violation of this clause. The suggestion carries with it the thought that real estate in cities of the first, second and third classes, and for that matter in boroughs and townships, is of the same character, and that if the constitutional requirement was simply one of uniformity, it would follow that the same system would necessarily be in force in all parts of the commonwealth, and prevent a classification of real property in second class cities different from that of the remainder of the commonwealth.

It is true that such might be the effect of the elimination of this clause from constitutions of other states, but I do not think such a result would follow in Pennsylvania, because we do not have the general property system of taxation for state purposes. Real property is taxed only for local purposes; and all laws relating to taxation for local purposes are passed for particular classes of municipalities and are presumed to be general laws, even though the class affected may represent but a minor portion of the commonwealth. The validity of such an act as we have in our second class cities is established not wholly under our taxation clause, but involves as well the question of municipal classification. The only question arising under the taxation clause is the question of the proper classification of subjects, and if this classification is proper when of general application, it is equally proper if applied to any of our municipal classifications, if the act in question regulates municipal affairs and a necessity therefor exists. The question whether an act is one regulating municipal affairs is a matter to be determined by the courts. On the other hand, the question of necessity seems to be entirely a legislative question. I believe, therefore, if we should eliminate the "territorial limits" clause, and have our provision read, "All taxes shall be uniform upon the same class of subjects, and shall be levied and collected under general laws," that our second class city system of taxation would be as equally valid as it is under our present clause. As I said before, I do not believe that this clause is of any value in Pennsylvania. The case of *Board v. State*, 58 N. E. Rep. 1037 (Ind.), is authority for such a conclusion.

The additions which I would recommend to our present provision have already been indirectly referred to in the matter of inheritance and coal taxes. With the approach of the time when it may become necessary to levy an income tax for state purposes, provision should be made so that incomes below certain amounts might be exempted from taxation. At the same time our clause should be changed so as to permit the granting of exemptions in the case of inheritance taxes. I also believe that both income and inheritance taxes should be graduated according to the amount of

the income or estate, and provision should be made to permit such graduation. In addition to this it would seem necessary to insert a clause to permit classification of anthracite coal for the purpose of taxation, and to authorize the legislature to return part of the tax realized to the districts in which the coal was mined. It is only proper that these districts should receive material benefit because many of the communities are facing the time when anthracite coal will become exhausted, and valuations will necessarily be greatly reduced. In addition to this many communities are suffering from cave-ins of the surface, which frequently result in the destruction of life and property, and in such cases funds should be provided to reimburse persons injured.

The commission which was appointed by the governor to consider the amendment and revision of our present constitution, submitted the following clause for consideration by a constitutional convention:

"Taxes shall be levied and collected only as prescribed by general law. A tax shall be uniform upon the same class of subjects within the territorial limits of the taxing authority, except that an income or a decedent's estate below a minimum prescribed by law may be exempted from income and inheritance taxes.

"Laws may be enacted providing for the levying and collecting of a special tax on anthracite coal when prepared for market. An appropriation not exceeding the amount of the proceeds of such tax may be made by law for the relief of persons, corporations, associations and municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal."

This provision is in accordance with the suggestions I have made, except that it fails to permit the graduation of taxes on incomes and inheritances. In closing, I might remark that in 1921 the legislature adopted another state tax on anthracite coal without providing for any distribution to the local municipalities. That act is now being attacked on the question of the right of the legislature to classify anthracite coal for the purpose of taxation. The validity of this classification is considered serious, because the same question was adversely decided under our act of 1913. It is, however, believed that with the elimination of the question of the disposition of the proceeds of the tax, the law may be upheld. If it should be declared unconstitutional, our only hope to raise revenue from this source and to assist the communities where this coal is mined, lies in an addition to our present constitutional provision on taxation.

CHAIRMAN SUTHERLAND: Professor Bullock, who was to have closed the formal discussion, is not here, therefore we will proceed to an informal discussion, which will of necessity have to be

limited. I will ask Professor Lutz of Ohio to lead this discussion on a general line. I am sorry that Professor Bullock is not here, particularly because I should love to hear him tell his innermost and frank thoughts about the pending revenue provision that the Illinois constitutional convention tentatively has thrown together. Professor Lutz, however, will, I think, do justice to the subject. I think that he thinks about the same of it that Professor Bullock does, but he was more kind when he spoke about it in my presence. He did not comment on it at all. Professor Lutz, will you step forward?

H. L. LUTZ of Ohio: Mr. Chairman, ladies and gentlemen: No one is more sorry than I that Professor Bullock is not here, but since this is the case, I shall offer a few general observations with regard to the nature of constitutional provisions on taxation. It seems to me that the things aimed at by a constitutional provision, in the minds of those who support existing provisions, as well as in the minds of those who seek changes in those provisions, are these: I am speaking particularly, of course, from the standpoint of those who oppose the removal of the uniform rule. In the first place some of them seek essential justice in taxation. That, I know, is the real desire of many people, who, perhaps from ignorance, or from a misguided judgment, feel that the uniform rule in the constitution does give essential justice. How far they are beside the point, I shall not now consider. That is one thing, however, which some people are seeking.

In the second place, I think we may put the motive of the distrust of state legislators. Many of us know that the constitutional provisions on taxation in the states of the middle west—Ohio, Illinois and so on—were written some half-century ago, when there was a rather marked reaction against the freedom which legislatures had been exercising. The people still cling to this method of curbing and restricting legislatures because of the disposition of the latter to neglect the instructions and wishes of the constituents in various ways.

There is a third motive, which Governor Brown brought out so aptly as operating in New Hampshire, the desire to "pass the buck". The people who are now pretty well protected by a constitutional amendment have no desire to see it changed. People who are not now included in a tax system that is established under an existing constitutional provision likewise have no particular desire to see the change brought about. So, the owners of securities in New Hampshire may oppose the broadening of the constitution there. Organized labor in many states may feel that it is to their special interest to oppose the broadening of the constitution, and so on. There may be other things that are sought, but we may discern at least these.

Now, I need not remind this body that essential justice in taxation may be obtained in other ways than by hard-and-fast constitutional rule; in fact, nothing is more common, nothing is more universal than the essential injustice which is fastened upon a state by the kind of constitutional rule which Mr. Laylin recited for the State of Ohio; nothing can be more unjust, nothing more inequitable than the distribution of tax burdens in a state which is compelled to rely primarily on the general property tax. Therefore particularly in those states in which the opposition to constitutional reform centers around those who believe in a general property tax, who feel that the property tax is safeguarding their interests—the answer is just that which I feel in my own mind I could make to our people in Ohio—"very well, you property owners are maintaining the uniform rule, therefore we will permit you to bear the burdens of taxation in Ohio, and you may continue to bear them until such time as you come to see the truth of the broader principle that you cannot, in the field of taxation, give an absolutely hard-and-fast guarantee of justice in taxation simply by prescribing in the constitution the outlines of a system of taxation. That is not the place to lay down the outline of a system of taxation, and that is what you are trying to do when you embody into it any such principle as the uniform rule." Essential justice can be attained in other ways than by writing the tax system into the constitution.

There are certain things which it seems to me must be avoided in the drafting of a constitutional provision on taxation. In the first place, we must avoid the prescription of excessive details. That is a general fault in American constitution making in the last generation: The constitutions of Oklahoma and Louisiana are notable examples. The former is a bulky document in itself, instead of the few meaty pages which comprise the federal constitution of 1787. We are still seeking, you see, to get these essential programs laid out in the constitution, and we cannot hope to prescribe everything in the constitution. There are many of the states, notably some of the western states, which have embedded other things than the uniform rule in their constitutions, but these are now promising to be at a disadvantage, and they would be eliminated if it was possible. Montana, Missouri, Colorado and other states have this problem. They put their state boards of equalization into the constitution, thinking that this step would safeguard their interests, but they woke up a few years later to find they had lost more than they had gained.

Secondly, the constitutional provision on taxation should be confined to the broad general principles upon which the revenue system is to be built. Logically and naturally and fundamentally the details must be left to legislative procedure and to administrative routine to be put into effect.

Finally, I cannot wholly subscribe to Mr. Dyer's suggestion to embody in our own or any other constitution the limitations upon tax rates. It is true that for the benefit of the governor's taxation committee in Ohio, we did attempt to calculate average local rates, the range of rates that would safeguard for the present the interests of rural districts as well as the interests of the cities. I am not, however, willing to commit myself to the tax limitation rule in the constitution as one that the state can expect to live under for a generation, without bringing great hardship upon various sections. We cannot now determine what the burdens of government are going to be a generation hence, and we cannot therefore determine what the reasonable limits upon tax rates should be for this period. In this matter of rate limitation also we must frankly face the fact that the constitution is the place for general principles only.

In conclusion I recommend the model provision with regard to a constitutional provision on taxation, which has already been drafted and approved by the N. T. A. I think you will find that this provision states clearly, simply and broadly, but still with sufficient care as to general principle, all the fundamental or constitutional rule in regard to taxation that any state requires. All other action must be left to the legislature. If the people distrust the legislature, say to the people that they should send men to the legislature whom they can trust. If greater intelligence is required, then the men who are sent to the legislature must be of a calibre that will insure a workable, an equitable and efficient system of taxation under this brief statement of general principle. This, I believe, is the fundamental approach to the whole question of taxation provisions in a state constitution.

C. P. LINK: Mr. Chairman and gentlemen: I had the pleasure last fall of drifting into the constitutional convention of Illinois and found a most interesting time. Our presiding officer this afternoon is a member of that convention and I suggest we hear from him on the situation in Illinois.

CHAIRMAN SUTHERLAND: I thank you, Mr. Link; that saves me from introducing myself. When Governor Bliss honored me by suggesting that I might take the chair this afternoon, I told him that the one thing that prevented me from accepting at once was the desire that I had to get into the informal discussion for a minute or two. He said, "Oh well, you can do that from the chair." I will say now, that from this point on, remarks will be limited to five minutes each.

A year ago in Salt Lake City I outlined the provision that had been drafted by the revenue committee of our convention and had been submitted by it for consideration of the convention as a com-

mittee of the whole. Briefly, the provisions of that report were that property in general should be taxed by value, but that there might be certain variations from that rule. First, there might be a classification of intangible personal property; second, there might be an income tax. That income tax might be a uniform income tax upon all income from whatsoever source derived, or it might be a graduated or progressive income tax upon all income, but if it were a graduated or progressive income tax the highest rate should not exceed six times the lowest rate; or there might be a differentiation in the tax upon the income derived from property and upon income otherwise derived, after the Massachusetts plan. The exemptions were limited to five hundred dollars for a single individual whose total income did not exceed one thousand dollars; one thousand dollars to a married man whose total income did not exceed two thousand dollars. Above those amounts there was to be no exemption whatever. The constitutional convention changed that report in these particulars. It struck out (or there was stricken out when the report finally came to the convention) the provision for classification of intangible property. There was substituted for that a provision that the tax upon incomes might be substituted, in the discretion of the legislature for the tax by value upon any personal property to that extent, leaving a certain amount of classification in the hands of the general assembly. The convention proceeded further to amend that, to provide that there should be a general income tax. They struck out the differentiation between income derived from property and income otherwise derived. They lowered the limitation that in the event of graduation the highest rate should not exceed six times the lowest rate, so it was that it should not exceed four times the lowest rate, and they then proceeded to say, in lieu of the general substitution provision, that there might be a tax upon the income derived from intangibles, that such tax should be a real substantial and uniform tax. After the convention in committee of the whole got through with that article, I think it would have puzzled the best legal minds in this room a good deal to have told just exactly what it meant. The committee on phraseology and style has labored with it all summer. It looks better now than it did, but still I think the general impression in the minds of the convention is that there is altogether too much detail, which will result in confusion and considerable litigation before we shall know exactly where we stand on matters of revenue, particularly with reference to the income tax. There was also a provision that was very objectionable, for the most part, to income tax men, in that we attempted to write into the constitution a provision for deduction of the tax paid upon property by valuation, from the tax upon income derived from such property; and the interpretations of the language on that

were very many, but most of them indicated that it might be construed practically to wipe out a substantial part of our revenues, as had been done in Wisconsin under merely a statutory provision, and of course most of us were opposed to writing any such thing as that into the constitution. Now, we have come to a place where I think the best thought in the convention wants to adopt some general limitations. I might say as to classification, that in our state the thing has been bandied about so that for us to use the term "class of property" or "classified" would be to make a hard campaign of education essential, and that even then a provision of that sort might not carry. Consequently if we could arrive at some statement of limitations along general lines, which would be sufficient to produce equity in taxation, which would be a bulwark upon which the courts might stand, it would be highly desirable; but it is one thing to talk in fine general language, as I am doing now, about such limitations, and it is quite another thing to try to reduce them to writing so they will mean anything and will stick. That is our unfortunate condition.

Now, I brought out from Judge Lyons of Wisconsin this morning another point, with reference to the income tax. We have been criticized for putting so many limitations around our income tax, especially for that limitation as to the rate. We did that because we saw in the beginning the danger of that excursion into the surtax field in Wisconsin. Judge Haugen appeared before us and we learned it practically from him, and we viewed that tendency with alarm, and I was exceedingly interested to hear Judge Lyons say this morning that efforts were being made now to extend it into other special fields. That is exactly the thing we feared. The whole tendency now is to make government carry more and more of the burdens that used to be carried by individuals, to do this and that for that class, or for the other class, at the expense of government. The easy way to do it is to get the revenue out of the easy sources; and just at present the income tax has appeared to be the easy source, largely because of the tendency to raise the exemptions so that fewer people participate in the payment of any income tax. Therefore we wanted, and were justified, I think, in putting in some provision on the subject that at least will prevent surtaxation. My five minutes are up.

I should like now to call upon Honorable Fred A. Sims of the Indiana state tax commission. Indiana has recently attempted to adopt a very, very broad revenue provision, without laying down any principle or any specific statement, any great limitations on the power of the general assembly. If you will be kind enough to tell us about this matter we will feel obliged to you, Mr. Sims.

FRED A. SIMS of Indiana: Mr. Chairman, ladies and gentlemen: The opportunity of addressing this assembly came very unexpect-

edly to me, and I am very poorly prepared to give you very many of those features of the Indiana situation, which doubtless, if presented properly, would attract your attention and possibly add something to the solution of your problems in the other states represented here. I have, in common with others, been indulging occasionally in the thought of the sectionalism of this country. We in Indiana generally consider this "way down east", and while there are many of our leading citizens and families there who are seeking to discover the roots of their families in your soil, in your territory, and to trace their history back to Plymouth Rock, I never was more struck in my life with the prevailing human nature of all, than when I listened to the address of Governor Brown.

We have in Indiana just passed through a campaign involving not only the income tax but the revision of the Indiana tax laws in general. In addition to that we have had in Indiana some of the amendments which you have in this state, for instance, the right of the governor to veto any single item or otherwise in the appropriation bill; and they have all met the same fate. I should like to say, a special election was called for the purpose of avoiding this thing that has been talked about so much here, that of a majority vote at a general election, which many constitutions provide for, including that of Indiana, in order to pass a constitutional amendment. This special election was called, at which nothing but the thirteen constitutional amendments were submitted, and a very considerable campaign has been carried on in that state in their behalf. The amendments concerning taxation attracted the principal attention, and while one of the thirteen amendments did pass—that relating to citizenship—our situation in that regard was so indefensible that no one spoke against it—we found that the situation regarding taxation in Indiana was the thing that attracted the great attention, to the exclusion almost of everything else. Our people in Indiana I do not believe are opposed, because of the result of this election, to a revision of the laws of the state; I do not believe our people are opposed to other features of taxation, but they did halt when we talked about the income tax, which was the specific amendment offered. They did oppose that in the rural districts especially, almost unanimously, for the reason that they felt that they not only paid upon their property but that they would have to pay upon the income derived from that property as well, and therefore would have no relief. That is the rock upon which it was carried down in my judgment in the State of Indiana, that is, it was the principal reason why it failed there. The people of the State of Indiana, too, seemed to be fearful of the increasing burden of taxation upon real estate more than upon anything else; to some



extent there are other forms of tangible property in that state where much objection was found to the amendments proposed, but the principal thing was real estate. And may I say that the people of that state feel that real estate ought to be protected from this increasing rate, as has been voiced by nearly every speaker in his remarks before this convention, in that it should be specifically done. I agree quite fully with what has been said upon the danger of enacting statutes into a constitution, as well as the danger of limitations which may prove, as has been suggested, a great detriment and handicap under other conditions, arising years after the adoption of that limitation. But, people are so fearful upon the question of confiscation, as they put it, of the income value of real estate—farm property and city property alike—that they are suspicious of every method that is proposed for the purpose of raising revenue from any other source.

CHAIRMAN SUTHERLAND: You are getting close to your time. Wouldn't you give us the gist of those two sections that you had. I think they would be interesting, especially in that first broad provision.

MR. SIMS: The first provision, known as amendment number ten, provided that there should be no limitation at all upon tax legislation. Mr. Zoercher, have you that?

PHILIP ZOERCHER: The legislature shall have the right to adopt a system of taxation. That was the language of it, no limitations.

MR. SIMS: Number eleven related to income tax exclusively. May I say just this in closing, that it was urged upon our people that classification would be in the nature of relief for real estate and for other property, because it would bring out intangibles, but for reasons given by the gentleman from Ohio, as well as the suspicion that this might be taken advantage of in the matter of classification, it went down and was used as an argument—perhaps an effective argument—against the adoption of such amendment. I thank you, gentlemen.

CHAIRMAN SUTHERLAND: I am now going to ask if Professor Robert Murray Haig will take a hand in the discussion. He is one of our foremost authorities on taxation, and to hear from him would add a great deal of enlightenment at this time.

ROBERT MURRAY HAIG: Mr. Chairman, ladies and gentlemen: I am embarrassed by the generous introduction I have received because all of you know that, like the German language, the more you study taxation the less you know about it. When Mr. Holcomb asked me a moment ago to say something about the theo-

retical aspects of the subject under discussion, my first reaction was that there was no theory to it. States like Ohio, Indiana and Illinois find themselves in the mire and are having great difficulties in extricating themselves. This bare statement would, at first thought, seem to cover the situation.

Upon further consideration I am reminded of a friend who was recently introduced to an audience which had just listened to a lively denunciation of theory and theorists. He said: "Ladies and gentlemen: I am no theorist and have no respect for such gentry. I like the practical man—the man who knows where he is going and gets there—and when he gets there finds that he is in the wrong place!"

Viewed from this angle the problem is very much one of theory. One of the chief difficulties appears to be that certain influential elements in the community, such as the farmers, have become theorists to the extent that they decline to start on the journey until they are shown precisely where they are going and are persuaded that the destination is worth reaching. To me this seems a reasonable stand.

The significance of this situation to us, as students of the tax problem, is very plain. We are passing through a period characterized by a violent reaction against the general property tax. Let us not forget, however, that most of our fulminations against the general property tax are premised upon the assumption that it cannot be administered. Under present conditions I believe that premise to be justified. The system has broken down in too many cases for the conclusion to be in doubt. Under present conditions it will have to go and be succeeded in the evolution by certain other methods. Where we are going and at what point we may expect ultimately to arrive are interesting and pertinent queries and we have not paid enough attention to them. It will be surprising to me if, in the ideal system of fifty years hence, property does not form a large part of standard used in the apportionment of taxes. The important thing is progress, and to achieve progress we must make each step thoroughly justify itself. This turns very largely on administration. The program should be to abandon the unworkable, to adopt something that will work. Fine talk about tax reform is worse than useless, unless we can set up administrative machinery which will be effective. Can we blame the farmers for refusing to throw open their state constitutions until we can show them a program which offers a real improvement and one which can reasonably be expected to work well with the administrative skill available? The true limiting factor in the present situation appears consequently to be the possibility of developing an administration which will make our new-fangled taxes really work.

CHAIRMAN SUTHERLAND: Now, let us have a good, free discussion of this subject. We want to hear from everybody, and I am sure every one in the room has given this subject, of all subjects, a lot of consideration. Do not hesitate, but let us go forward in snappy order.

F. H. VANDENBOOM of Michigan: I have listened with a great deal of interest to the different topics. There seems to be a great deal of it hinging upon this state income tax. We have been wrestling with the question of a state income tax in Michigan for quite some time. I am a good deal like your friend from Ohio; a Granger; a member of the farm bureau; and have listened to their tale of woe, and been in sympathy with them, and have tried in various ways to find a way out, but I am a very conservative sort of a chap; do not jump at conclusions very rapidly. I happen to be chairman of the committee on taxation in the senate and have been there for four years, and this matter has been up at times, prior to our special session last summer. The tax commission seems to be very much in sympathy with it, the attorney general is in sympathy with it, the governor is in sympathy with it, and when it was finally proposed to the senate, after being passed at the special session by the house, I could not see any good reason why the senate should not then be willing to submit it to a vote of the people. The manufacturing interests were very much opposed to it, and I said to the manufacturers, "Why, I do not see why you should be so much opposed to this, because the way I have it figured out, there is really nothing to it after all; it is only giving the people the right to say whether they believe the legislature should have the right to pass a law permitting an income tax." Our governor, who is a pretty good attorney, and who has been attorney general prior to being governor, believes that the legislature has that right already; so really what are we submitting to the people now? Now, before the senate decided to let that bill go out before the people, there was considerable interest expressed and a lot of opposition. The moment that the senate decided to let it go out—and the question was in the hands of the members of the senate at all times—the interest seemed to die. The farmers are not talking about it now. I heard it mentioned at a meeting recently, but that is the first time I have heard it mentioned since last spring—since the special session. The manufacturers who were up in arms while this thing was being adopted, and sweating blood over it, are trying to forget it now. So after all, when you come to figure it down, the people who are so enthusiastic and for it, and the people who are so tremendously up in arms against it—after it has settled down—they are all resting back and thinking, as I have thought, that perhaps we do not know so much about it after all; as Professor Haig said just now, those who study the

most about it know the least. Over in the senate they call me a tax expert, and I feel farther from a tax expert than anybody I know of, but my friends said, let them go on thinking so. I have found that the greatest ability I had in matters of taxation was my ability to let the question rest in the committee room without taking any action. I heard our friend from Massachusetts speak of the income tax this morning, and if I thought he was conscientious about it and meant what he said, I should be for the income tax much stronger than I am now. He said that over in England they meddled with an income tax, and one time England was rich, and now these big estates have to be sold to pay the taxes. My contention is that the trouble in England is not the income tax at all. The trouble in England, as I see it, is the war situation and the labor situation. They have no greater trouble in England than the question of handling the unemployed, and as far as those estates are concerned, from what I know of England, and while I have a big long Dutch name, I am somewhat of an Englishman; my mother was born and raised in England and spoke of those estates many times; my judgment is the quicker those estates are divided up and sold, the better off for England and the rest of the world. They are held by men who got them from generations back, never earned them, never used them, simply held them, and didn't do anything with them and prevented anybody else from doing something with them. What we need in England as well as in this country is to be up and doing, and as I size up the situation, outside of our foreign market, which is not right, and foreign exchange, which is not right, the minute the people of the United States say, "Let us go," we should be off. But as I find it, each man is sitting back and waiting to see what the other fellow is going to do. It is like the game of checkers. In this country there is not much wrong right now, except one is waiting for the other, waiting for the first fellow to make his move; and I do not think we have to fear about the income tax. I opposed it right along because I do not think the time was ripe. The trouble is there is a little sickness, and when people are sick everybody has a cure for them. As a matter of fact, I was sick once myself, and everybody had a cure for me, but the only cure I found was to work it off.

PHILIP ZOERCHER of Indiana: I was going to ask Mr. Dyer from Ohio, when he talked about limiting the debt, not to forget limiting the number of taxing units that you can have. In Indiana we have a two per cent tax limit, but when they get through with creating a debt up to two per cent, they just create another taxing unit, until we have a great number of them, and will have bonds issued on debt amounting to sixteen per cent of the total valuation. In Indianapolis they have a park system unit, a sanitary unit,

school unit, county unit, state unit, and now a county highway unit; and a three-mile rock road unit.

C. A. DYER: We have too many taxing units overlapping in Ohio, as you have. I don't think we shall create any more. It is a state-wide matter. If the chairman will permit, the professor and I over there always fight, always have for years. He is a man with an absolute trust in the legislature. He thinks they are something holy, he has associated with them so long. I have too, and he has arrived at one conclusion and I have arrived at another. The reason we do not trust the legislature in Ohio is something like this: Just to give an illustration of what happened last winter, Cincinnati needed two million dollars for current expenses, or thought she did. The thing was submitted to the people of Cincinnati last November and they voted it down. When the legislature met last winter in January, Mr. Taft of Cincinnati brought a relief bill up that covered that two million dollars. The legislature accommodately allowed the council of Cincinnati to issue bonds for two million dollars. The bonds issued were sold about eight weeks ago for two millions. Next December, when the people of Cincinnati go to the treasurer's office they will begin to pay the sinking fund and interest charge on that two million dollars of bonds that they voted down last November; and that is the reason we do not trust legislatures in Ohio, because they override the wishes of the people. We want the power back in the hands of the people where it belongs and not at the capital city.

C. P. LINK: That brings up a concrete fact in Colorado. Back in 1913, the tax commission drafted and recommended a tax limit law patterned after the previous history of several of the states. The legislature adopted that law *in toto*. The limit practically was this, that either unit—town, school, road, state or otherwise—could not increase over the budget of the previous year more than five per cent, without getting permission from the tax commission, but a safety-valve was put in whereby if the increase desired was more than five mills, or if the tax commission denied the application, then the tax-levying body could stick up a notice and hold a special election, and if the increase was voted by three-quarters majority, it became the levy of that year. That was following the proposition of putting it squarely up to the people, putting it squarely back home, and you will be interested in hearing me say that that law has been operating now since 1913, and in a great many cases where applications have come to the tax commission for increase, it was beyond our limit of five mills. In many other cases we denied application where we doubted their wisdom, or wanted to put the responsibility back to the people. In far more cases the people initiated increases themselves, by special notice.

Out of these hundreds and hundreds of cases, so far as I know, where these increases for schools and roads have been put up to the people of Colorado for their votes, only two have failed but have been voted by three-quarters of the majority. We are coming to the point of putting responsibility back with the people. In putting it back to the people, the people vote these taxes.

CHAIRMAN SUTHERLAND: Do you think, Mr. Link, it is better to put a limitation into the constitution or to leave the power in the hands of the general assembly?

MR. LINK: Personally, I believe with Mr. Dyer here, that the people should have the ultimate vote.

CHAIRMAN SUTHERLAND: You would put it in the constitution but provide a safety-valve in a local referendum?

MR. LINK: Yes, I believe in that principle, that the people should be responsible, especially in local affairs, especially in school and road affairs.

CHAIRMAN SUTHERLAND: Such a limitation as he provides would prevent first reference of the matter to a tax commission. Does it not involve a lot of detail in the constitution? We have tax limitation laws in Illinois.

GEORGE G. TUNELL: In California, in addition to the taxing bodies that were enumerated by the gentleman from Indiana, they also have irrigation districts, and they also have drainage districts. Now, they may not resort to irrigation districts in Indiana, but I should think they might properly very shortly adopt the drainage districts.

FRED A. SIMS of Indiana: Oh yes, we have them too.

CAPTAIN WILLIAM P. WHITE: I was wondering why there was such a reaction against the income tax in some of the states where it has been submitted to the voters. In the states where there are a lot of farmers, farmers own property, and they realize, being voters, that when they vote things they will probably come back to them in the form of taxes, and they do not greatly enjoy the privilege of paying taxes on their land and taxes on their income from the land. That is identically what the situation is in manufacturing. After having paid a proper proportion of taxes on my manufacturing plant, I protest against paying an income tax on the earnings from the same property; it is a little bit unjust to me, who by good administration and diligent work may make a little money, that I should pay a tax, where my competitor across the street, who is cutting my throat in prices, who does not make any

profit, may go on doing business at my expense. I say it is for that very reason that I advocate the sales tax. It is properly distributed, and I think if that question were submitted to your voters and properly explained to them, you would not need a constitutional provision, if the legislators felt that the voters were behind them in supporting such legislation.

PHILIP ZOERCHER: Who would pay that tax, you or the fellow that bought your goods?

CAPTAIN WHITE: The fellow that buys my goods. I pay them in turn. It is supposed that the general government under its present laws will be enabled to collect taxes necessary to carry on the government for this year. I predict that there will be a deficit, because the present laws are predicated upon a certain income. Those incomes are not now being earned. Large corporations are defaulting on the payment of their dividends because they haven't the money to pay with. A large number of corporations are carrying large debts to cover material which they bought, which has depreciated in their hands and is hardly equal to the value of the debt. Enormous losses have been made. One of the big shoe corporations, from a profit of thirty-six million dollars, reported last year a deficit of six millions of dollars. Now, part of that can never be recovered; it is lost. We shall pick up a little bit. The cotton people picked up a little this last year, but they are not going to get back what they borrowed on cotton. If we had had a tax on spendings we should not have had the extravagance of the last three years. The people would have been saving their money, not spending it for silk shirts. There might have been some silk shirts, but they would have paid a good round price for them. There may have been lots of money spent on automobiles that would not have been spent if a tax had been levied on that luxury—things of that kind. You feel that the small man is going to pay more than his fair share, that the poor man has to pay more than his fair share of taxes, through this kind of taxation. I say that is tommyrot.

H. L. LUTZ: I simply want to ask Mr. Link a question, if I may. If I got Mr. Dyer's point, as to their amendment, it is to serve really as a check on tax limits. If the people vote every time, where are you going to effect the salvation of the real estate owner who is already suffering from too much of a burden of taxation?

MR. DYER: We have in our proposed plan a debt limitation, and the people cannot go beyond that. We have come to the conclusion in Ohio that a municipal corporation, or state or school district, or whatever it may be, has got to adopt the rules that I adopt

and that you adopt. You have to live within your income. You are going to want a whole lot of things, and we want too many things. We want the state and the United States to do too many things for us; and we have to adopt a plan whereby the public will live within its income, just like the individual. It is going to be hard to do it, but the debt and the debt limitation will force the people to live within its limits.

CHAIRMAN SUTHERLAND: If the chair may make an observation from his experience with legislative and tax-spending bodies, it would be that your statutory limitations and your constitutional limitations on debt and on taxes will avail nothing; that tax-spending bodies and legislative bodies will get around your limitations by hook or crook, until the public is aroused and organized on behalf of public economy and public expenditure for strictly public purposes.

Mr. McKenzie, I am glad to see you come in. We are discussing revenue provisions in the constitution. Can you give us a word?

MR. MCKENZIE: I would rather listen, if you will excuse me, until I see where you are. I may have a word to say later.

CHAIRMAN SUTHERLAND: This wants to go right on now; it is a fine discussion; I should like to have everybody get into it.

MR. LINK: Just to verify what you have said, going back to my remarks this morning, I call attention to the fact that last fall, after hard times had come on, our constitutional limits for state taxes being four mills, the state educational institutions wanted more money and were honest about it; they initiated a bill for an increase to be allowed those institutions for building and maintenance purposes of one additional mill which raised the constitutional limit of state taxes in our state twenty-five per cent. over what it had been, and that was adopted by an enormous majority.

SECRETARY HOLCOMB: May I ask just what you do advocate then?

MR. LINK: In these remarks I am not advocating anything. I am speaking to the points as they come up.

SECRETARY HOLCOMB: We are interested in your experience to know what we are going to do.

MR. LINK: I was speaking about putting the safeguard in the hands of the people, and I was telling what it has done.

SECRETARY HOLCOMB: You said it had done nothing.



MR. LINK: I think it has had a depressing influence in general, but in so far as schools and roads and state educational institutions are concerned, every time, with the exception of two, since 1913, that the matter has been submitted to the people, either by constitutional amendment or statutory limits, the people have adopted the increases. Now, as to the remedy, I just spoke to our presiding officer's point. I think the remedy is in education of the people. That is all right to twit upon, but the fact is, members of this conference, that after these very people go to election and vote these increases and in a few months get their tax notices they go up in arms. We are in the situation in Colorado where you have to educate them. Now, there is a reaction setting in, particularly on consolidated schools, but I think the proposition is to educate the people. We have tried most every other way.

MR. MCKENZIE: I would like to know what you refer to in regard to consolidated schools.

MR. LINK: I refer to the fact that it has become quite a custom in the agricultural districts, where we have had twelve or a half a dozen country schools, to consolidate those districts into what is called a consolidated school district. The first thing they do is to build an elegant, large new school house, and the second thing is to provide transportation for the pupils, and in those cases it has got along now where the transportation expense has exceeded the salaries of the teachers. In several places now they have stopped the transportation and are throwing the schools back into the neighborhood school houses.

MR. MCKENZIE: Going back to the old red school houses.

MR. LINK: In several cases they are opposed to the expense. They first cut off the transportation, and that necessitates going back.

MR. MCKENZIE: How general is that?

MR. LINK: Not every extensive. The reaction started on account of the exceedingly high levels of the district school taxes.

MR. LAYLIN: In Ohio we have a school law that prescribes the minimum quantity of education. Schools shall be open so long during the year. Certain standards have to be maintained by the teachers; they have to have so much training, and so on. If you build a school house containing more than a certain number of rooms, it must be fire-proof. You are familiar perhaps with the modern requirements as to standards of schools. All these things are imposed upon the local school districts by the mandate of the state law. Now, a good many of our southern counties in the

hills bordering the Ohio river have general property tax duplicates so low they can scarcely maintain their schools within the limitations of this statutory rate limitation to which I referred a while ago. They cannot do it. Special provision was made for raising these limits by popular vote in the legislation of 1920. At the same time that legislation provided for state aid to these weak school districts, as they were called, in order to enable them to maintain the required standards. Yet, when it came to giving this state aid, the city districts balked at allowing the measure to go through so as to render the state aid, unless the poor districts had fully exhausted their revenue resources. Therefore, one provision of the bill was that unless they voted the maximum levy they might vote they should not receive any state aid. Many districts were in that predicament. Most of them, of course, did vote the full tax, but large numbers of them did not. The result is that the school system is between the upper and nether millstone. Here are certain requirements. If you have a school at all, there are certain requirements for the school; that it shall measure up to certain standards. Here is a district where no special forms of revenue are available. An income tax would be a joke in such a district. The inheritance tax produces no revenue there; nothing is taxable except land, and it is mighty poor land. The result is, those schools are going to close, simply because there is not enough tax-paying ability to maintain the standards that the state law requires. There is the dilemma in which we find ourselves in Ohio on that score, and it has been repeated with modifications in other fields. The point I desire to make is this: I question the practicability of limitation with popular vote. If the district to which the limitation applies is such that the remedy available under the limitation will not finance the fixed charges imposed by the policy of the state law upon that district's activity, it seems to me an absurdity for a law to say you must have normally trained teachers; you must have certain standards, and you must have such and such things, if they do not give them the money with which to do it.

CHARLES J. TOBIN: I believe we ought to make some effort to have it stated in the constitution that there shall be one assessment day in the state for all purposes. I don't suppose in any state we can rid ourselves of these different subdivisions and different taxing districts, but I do believe we can provide one assessment day in all tax districts within a state. That will rid the tax bureau of much wasteful time and will also rid ourselves generally of much waste of money by officials in public affairs. I venture to say that in New York State we have a tax day every day.

CHAIRMAN SUTHERLAND: Do you mean to say you have an assessment day in each district?

MR. TOBIN: In some of our tax districts there is an assessment day in some particular place, so that if a corporation has property throughout the entire state, they are looking after their assessments and checking up their assessments every day in the year, and it is a very expensive proposition not only to the taxpayer but the people generally. If we could have it stated in the constitution — and I think that is the place rather than in some general law, subject to change—we should move one great big step forward, and if that is possible of accomplishment and is accomplished we could try to rid ourselves of the numerous unnecessary taxing districts.

CHAIRMAN SUTHERLAND: Are there many states, Mr. Tobin, that have your situation? Illinois hasn't it. We should have to have it in our constitution. April 1st is our assessment day for all purposes.

MR. TOBIN: I found on examination that there are a great many cities that have various tax dates throughout the state, not only for the state tax but for the towns and villages and the different subdivisions that go to make up the taxing districts of that state. While I am on my feet I should like to add one other remark. I do not think it was fair to say that the people who have the smallest amount of money are not quite paying their full share of taxes. My examination of the real property tax in New York shows that the man who owns the small home has for years been paying more than his share, and that it is the man of larger property that has been getting off, with the exception of the utility companies. If we are going to rid ourselves of the income tax, which exacts a tax alike to all, commensurate with the ability to pay, and place taxes on the basis of consumption, we are going backward instead of forward in the progress of taxation.

A DELEGATE: Cannot the legislature fix that uniform date?

MR. TOBIN: They could, but it would be better to have it placed in the constitution so that it would be fixed for good. The legislature could not constantly change it as it can under a statute.

WILLIAM A. HOUGH of Indiana: I think perhaps the experience that we have had and are having in Indiana now may be of some very considerable advantage to our friends from Ohio who are struggling for some constitutional amendments. We have in Indiana a constitutional limit upon the indebtedness of any municipality of two per cent. As soon as it was discovered that two per cent was not enough money and that they had issued bonds in excess of that amount, the case was taken to the supreme court in our state, and they suddenly made the discovery then that we had two townships and that we had two cities, one of them was the


civil township, that could have a two per cent indebtedness, and the other one was the school township, which could also have a two per cent indebtedness. Every legislature that we have had since then has put into effect either laws which have been unquestioned or laws which have been declared constitutional by our supreme court, which have widened the margin for borrowing money. We have in the townships of our state a four per cent limit for borrowing money for the construction of roads, and when a very large number of our townships had almost bankrupted themselves and could not raise any more money for that purpose, the legislature, which our friend trusts so implicitly, suddenly discovered that they could build county unit roads and passed a law allowing counties to borrow two per cent more for county roads; and in the City of Indianapolis they have still another taxing unit for park purposes. They can also borrow two per cent more. There is a sanitary district also. Out in the country we have drainage districts which issue bonds for the construction of drainage ditches.

PHILIP ZOERCHER: And a health district too.

MR. HOUGH: Yes, we have, in the State of Indiana, notwithstanding our constitutional limit of indebtedness of two per cent, the possibility of borrowing as much as nineteen per cent, so that your constitutional limit will amount to nothing unless you have some other sort of a restriction placed upon it, and I want to warn you—you have the correct view about the legislature—but I want to warn you about the people. There is just one limitation placed upon borrowing money in our state, and that is the state board of tax commissioners. If they come before us with an issue of bonds and we say "no", that is final, and that is the only way you will ever get real limitation upon your indebtedness. Now, just to illustrate what we do—and I understand we are the only state in the Union that has that sort of law—last year in Lawrence township, in Marion County, an application was filed with the state board of tax commissioners to borrow \$150,000 for the erection of a school house. The board had had some experience with people who borrowed \$150,000 and then spent \$200,000, so they said to these people—and that is what we say to all of them now—you let a contract to a contractor with a bond to complete your school house for \$150,000, and we will approve your bonds. They took bids, and the lowest bid that was received for the erection of the school house was \$182,000. We said, that is too much; we cannot approve the issue of bonds; the prices that you are asking for the construction of this school house are excessive, and you will have to cut down the price or you will have to build your building for less money than that; put it off until next year; con-

struction costs are going down. A howl went up. They said, you people sitting up at the state house haven't any business telling us how to spend our money; it is our money. But, the practical working out of that thing was simply this: The township trustee and his architect, cooperating with us, let a contract to build that school house week before last, without a single change in the plans, and specifications of that school house, for \$115,000. We often have petitions for roads come before us. We investigate the price of the road. If the cost is excessive we deny the issue of bonds. We deny the issue of bonds if the rate is too high. We had pending before us not long ago an application for an issue of \$450,000 of bonds to build roads in Elkhart County, Indiana. At the hearing it was shown that in the City of Goshen, to which these roads all ran, the tax rate was \$3.50 already, and in the town of Waukarusa, a very prosperous little manufacturing city, the tax rate was \$4.50, and we said, "You cannot issue those bonds". And that is final. If there were any appeal from it to the people or anybody else they would vote it and spend the money anyway. You cannot trust the people because they do not think they ever have to pay for these roads. The very minute this county unit law was passed, it opened up the whole state, and the truck people and the cement people, and others said to the people: Now you have available for roads in your district here \$250,000. The first thing you want to do is to get a petition up to the people at the court house, and we will help you get your roads through, and so on. Then this limitation on the building of roads was placed in the statute, and the state board of tax commissioners have control over that. If it is unwise, if the cost of the building of the road is excessive, or if it is not a good thing to do at the particular time, we refuse to permit the bond issues. We found in some parts of the state they have as much as \$50,000 a mile for roads that are being built in other parts of the state at from twenty-eight to thirty thousand dollars a mile.

PROFESSOR FRED R. FAIRCHILD: I am extremely interested in what has been going on. As I have been thinking about this thing, I have noticed that some of you are afraid of the legislature and some are afraid of the people. I do not believe there is any human being wise enough to lay down rules and regulations to guide the conduct of his fellowmen and their prosperity for generations in the future. I do not think it can be done, and for that reason I very much distrust all of these constitutional requirements. In the Ohio situation, you already have the constitutional restriction, and you probably cannot go and ask the people to sweep the whole thing away. That looks too extreme, and you frighten everybody when you propose it. Therefore you try to substitute for the present restriction, which has proved unwork-



able, something else that you think will work better. How do you know that fifty years from now your plan won't be making men just as much trouble as the old one is making for you, and that you won't be held up to scorn by their efforts to get rid of what you have done, just as you are now holding up to scorn the authors of the constitutional rule which you want to abolish? We have been doing some pretty good work in taxation in Connecticut in the last ten or twenty years. When we want something done, if we can convince the legislature that it should be done, it can be done. We do not have to go through these campaigns of education, conventions and amendments, before we can get ready to start. Now, lest you think I am bragging about my State of Connecticut, let me hasten to admit that in certain other fields we have constitutional restrictions that have proved very embarrassing; for example, in the matter of representation in the legislature. That, however, is another story, that does not concern us here. In taxation we go along pretty well. We are not interfered with. In our scheme of representation in the legislature, we are tied up forever, so far as I can see, with something that I suppose was put there by well-meaning people, who thought that they were performing a public service for their descendants for all time to come. Of course, we are very wise; we know how things ought to be done; we are altruistic and well-meaning; we want to pass things down to our descendants for generations to come, so that they shall call us blessed. But let us look out. All wisdom is not confined to us, and the time may come when our descendants will not call us blessed. Why cannot we leave those things to the wisdom of the legislature? There is where we must go for our statutes, our governmental regulations. The legislature is not perfect, but it is our instrument. Let us make it as good as we can, and then take the consequences. Thank you.

J. H. FERTIG of Pennsylvania: I should like to call attention to the constitutional clause in Pennsylvania with regard to debt limit. It may be of interest. Before mentioning the clause, I might say that we have for local purposes three units which may contract debts: First, the county unit, and then within the county unit three different systems of municipalities, first, the cities, secondly, the boroughs, and thirdly, the townships. Now, of course those do not overlap. They are all parts of the county unit, and then each one of those three subdivisions, the city and the borough and the township, has also a school district. The county is authorized to borrow money, likewise the city, the borough, the township and the school district. By the constitution each one of those districts is authorized to contract debts to the extent of two per centum of the assessed valuation, without the consent of the people. From two to seven per centum debts may be contracted with the

consent of two-thirds of the persons voting at the election, and from seven to ten per centum the debt may be contracted by the consent of three-fifths of the voters, so that in any district in any particular county there might be a total debt of thirty per cent. Now, it would be impossible in Pennsylvania to have the situation that you have in Indiana, for the reason that the constitution particularly prohibits the delegation of any function of a municipal character to any special district or special commission. It must be taken care of by one of the districts which is in existence. For instance, you could not have a special park commission in any city in Pennsylvania to take care of a park. That must be taken care of by the city itself, under its power of taxation and under its power to borrow money. So that the only trouble that we have with regard to municipal indebtedness in Pennsylvania may be said to be delinquencies on the part of authorities in keeping up the sinking fund. I might also mention that in addition to that power of borrowing money, our boroughs and cities and counties have the power to borrow money for the purchase or erection of improvements of a revenue-bearing character, without regard to the debt limit. For instance, a city has a right to purchase a water plant and to issue bonds, without regard to the limitation in the constitution, if the income from the improvements for a five-year period will show sufficient to pay interest and sinking fund charges. Now, that is a new proposition, and it is beginning to be taken up by different municipalities. Whether or not the revenue of the particular work will be sufficient to meet these charges is a matter to be determined by the public service commission.

CHAIRMAN SUTHERLAND: The hour is now getting so late that we shall be obliged to close this session, but the secretary has two resolutions to read.

SECRETARY HOLCOMB: I have two very short resolutions to go to the committee on resolutions without debate, as usual.

"Resolved, that this conference request the National Tax Association to continue the sub-committee on 'Apportionment of Taxes of Interstate Public Utilities' and that the scope of said committee be broadened so as to embrace the consideration of the entire subject of utility taxation, with the suggestion of approaching a model tax law for all the states in the taxation of such property."

I have another:

"Resolved, that this conference request the National Tax Association to continue the sub-committee on the 'Apportionment of Taxes of Manufacturing and Mercantile Business' for report at the next conference."

[Adjournment of Session.]

## SIXTH SESSION

WEDNESDAY EVENING, SEPTEMBER 14, 1921

SECRETARY HOLCOMB: In the absence of the president it devolves upon myself merely to call this meeting to order and to make the announcement that the sub-committee of the committee on resolutions is requested to meet at 8:30 tomorrow morning, either in here or in one of the rooms at the entrance. The sub-committee consists of: Tobin, Chairman, McPherson of Georgia, Van Alstine of Iowa, Bond of Massachusetts, Edgerton of Montana, Wallace of North Dakota, Bailey of Utah, and Donley of Manitoba.

The full committee on resolutions will meet at 9:00 o'clock, probably in this room. This evening we are to have interesting addresses. The first address is of such a nature that it is peculiarly appropriate that we call to the chair one who has had long experience in the administration of municipal revenue. He has also been a member of the National Tax Association for many years and is familiar with the various problems that we have discussed. I refer to Judge Oscar Leser, formerly Judge of the Appeal Tax Court of the City of Baltimore, Maryland, and now on the State Tax Commission of Maryland—Judge Leser.

OSCAR LESER, presiding.

CHAIRMAN LESER: Ladies and gentlemen: My function is a very simple one. I want to remind you that this has been in one sense a most extraordinary day for our association, for on the same day we have heard from a Governor that really and truly knew something about taxation; we are to hear from the Mayor of a great city, who has more than a theoretical or book knowledge of the subject.

Our first speaker had his training in finance and taxation in serving on the taxation committee of the Massachusetts legislature and following that as a member of the Ways and Means Committee of Congress. Since then he has become the chief executive of Boston and has had many and varied problems. I have the honor of introducing Mayor Peters.

ANDREW J. PETERS, Mayor of Boston: Mr. Chairman; ladies and gentlemen and delegates; it is indeed a pleasure to be here



tonight as your guest and to share in this so interesting a convention. I am glad to say a word too about the problem of taxation as it confronts us in Boston. The problem differs in our cities, and yet as it differs it seems to me there is through it all a great similarity. We are confronted today in our whole country with the problem of conserving our resources, bringing to bear on the problems of our government a more careful and intelligent study. Too much in the past have we developed by methods that were to say the least individualistic, and too little have we considered the bringing into effective cooperation the resources of the community. A great war's debt has shown us that we cannot go on by the loose methods of government which have characterized so much of our legislation in the past, and no subject has had less comprehensive or less thoughtful legislation applied to it than has taxation. A meeting such as we have here is going to do a great deal towards arousing public sentiment to supporting the intelligent thought of you taxation experts. We need that as one of the progressive steps in our country, and I am sure you are doing a high public service by bringing together the experts of the country on taxation, and by bringing to the subject of taxation the thought and intelligent consideration which you can give it and which that subject so greatly needs. I am about to say a few words to you, and very largely as regards the municipality of Boston, because I could not attempt to take the cities as a whole, as not only our chairman but so many of you are so much better informed. I may say in passing that perhaps some of our problems in Boston will suggest to you the problems that are being confronted in the other cities and that will need general treatment by all the municipalities in our country.

### MUNICIPAL REVENUES

ANDREW J. PETERS

Mayor of Boston

The national government and the states—at least the state of Massachusetts—are fortunate in one respect, as compared with a city like Boston. It is their privilege to appropriate money first and find it afterwards. Perhaps that is one reason why their expenditures are so liberal. Whereas in 1916—the year before we entered the war—the customs receipts for the United States were only \$211,000,000, and the receipts from internal revenue only \$512,000,000; in 1920 the receipts from internal revenue alone had mounted to \$5,400,000,000. Of this sum Massachusetts contributed \$258,000,000, which was more than the cost of all our city and town governments and state government combined.

The State of Massachusetts has the same privilege as the national government and exercises it with considerable freedom. The City of Boston, however, is rather in the position of a private individual. The individual, if he is a prudent man, calculates his income beforehand and adjusts his expenditures to the probable figures. He has, in other words, a limit. So has the City of Boston. In all three of the branches of expenditure over which the city government exercises effective control, there is a maximum set by law which must not be exceeded. In 1921 the amount that might be expended for the city departments in general could not exceed \$11 per thousand of the average valuation of the three preceding years, plus certain items of revenue. The amount that might be expended for the schools could not exceed \$9.11 per thousand. The total of the net outstanding debt (which determines, of course, the annual payments for debt) could not exceed  $2\frac{1}{2}$  per cent of the same valuation, except by special authority of the legislature.

The city itself, then, has a limited income, applicable to its own expenditures. The state, however, charges us with a certain percentage of the state and metropolitan expenditures, neither of which is limited by law. The county expenditures (all of which for the County of Suffolk are borne by Boston) are also free from statutory limitation, but the city government appropriates the funds and in this way exercises a certain control over them.

One city department is self-supporting, as the national postoffice department is supposed to be. This is the water department, which is maintained both as to supply and delivery by the water rates assessed on the owners of property.

Apart from these water rates, which amount to some \$3,500,000, the City of Boston has to raise in 1921 more than \$52,000,000 to meet its current obligations. It has no endowment. The income of the trust funds, such as the \$5,000,000 Parkman fund, is all dedicated to specific purposes. It cannot, as the laws are today, like the national government, impose an income or a profits tax, though it obtains a share of the income and corporation taxes assessed by the state. Neither can it lay a tariff on goods entering its gates, like the octroi taxes which are in use in the cities of France.

Its principal source of revenue is real estate. This is assessed on the full valuation and the taxes are collected in the usual manner. There is also a tax on tangible personalty, not the property of corporations, which is assessed at the same rate as real estate.

We receive, also, as I have said, a share of the state income tax, to replace the revenue from \$167,000,000 of intangible personalty formerly taxed by the city. A portion of the state income tax devoted to school expenditures also comes to the city.

A portion of the state taxes on business corporations, domestic and foreign, is distributed among the cities and towns, and Boston receives its share. This is true also of the state tax on banks, street railways and public service corporations.

There are miscellaneous revenues, collected by the city itself, such as market rentals, hospital charges, fees for permits, interest, and smaller items. We also collect a poll tax, usually \$2 a head, but now \$5, the extra \$3 being turned over to the state to provide a bonus for soldiers.

If there is a surplus—that is, a cash remainder in the city treasury from the previous year, we are allowed to appropriate that. This, of course, is an uncertain factor. Occasionally we have had deficits. This year, I am happy to say, we had the largest surplus ever known in the history of the city. It amounted to nearly \$4,000,000; but I assure you we need it all.

In general, our receipts from the state now amount to about \$9,000,000 a year and the revenue and interest collected directly by the city (not including the water rates) amount to over \$2,000,000. All the rest falls on real estate, tangible personalty and polls.

The one overshadowing item is the real estate tax. Real estate (which bears the water rates too) supplies two-thirds of our entire income. Objections have been made to this for two reasons, which I think are sound. In the first place, the real estate tax is an indirect tax, borne in uncertain ratios by all the members of the community. Even the tax on land, in defiance of economic theory, is usually shifted. In some instances, in the business section of Boston, the tenant actually assumes the whole tax as a part of his rental. Secondly, the real estate tax is excessive in that it is out of proportion to the profits from that form of investment and the gain in real estate values. It has been estimated that in down-town Boston nearly two-fifths of the net rental of property (before the tax is deducted) is taken by the city tax. In other cities the corresponding figure is believed to be fifteen to thirty or thirty-five per cent. The effect of this heavy burden has been to retard real estate development and to contribute to the shortage of homes.

In the hope of discovering some method by which the burdens of government might be more equally distributed, I appointed some time ago a committee of experts, known as the Committee on New Sources of Revenue. It deliberated a long time and gave several public hearings. In March of this year it published a report containing several recommendations. One recommendation, an increase in the water rates, has been put into effect. Another, providing for a tax on itinerant vendors (not peddlers), has been approved by the City Council, but thus far has proved to be of slight value. The other recommendations were four in number:

1. A tax of one per cent on all retail sales, the proceeds to be applied to the interest and principal of the city debt. This was estimated to produce \$4,000,000.
2. A motor vehicles tax, calling for the distribution among the cities and towns of one-quarter of the state motor vehicles tax. This was estimated to yield \$600,000 to Boston, all of which was to be applied to the construction and repair of streets.
3. An excise on places of amusement at the rate of five per cent of their gross receipts. It was found that the fees in Boston were low, sometimes absurdly small, as compared with those charged in other cities. The federal government, for the year 1920, collected over \$1,000,000 in taxes from such places in Boston, while the city government collected only \$36,000. It was estimated that a proper schedule of fees would bring in \$500,000.
4. A miscellaneous table of fees for various occupations and privileges, such as permits for garages, explosives, collection of waste, etc. This was estimated to yield \$162,000.

All of these recommendations require legislative authority and that is an obstacle we have not yet surmounted. The state, for example, is reluctant to part with any of its motor vehicles revenue, all of which it claims it needs for the upkeep of the state roads. The retail sales tax may not be constitutional. The excise on amusements will be opposed by the proprietors. In other words, everybody is willing that somebody else should bear the burden, and somebody else in Boston happens to be principally the owner of real estate, who himself passes the burden along, when he can, to his tenants and through them to the community at large. The real estate owner is apt to believe that some relief would be afforded him if the cost of government could be substantially reduced. This is certainly true, but the problem of reduction is not so simple, as it may appear to an outside observer.

It is the state and school expenditures that increase by leaps and bounds in Boston. Neither of these items come under the Mayor's control. "The necessity for additional revenue," says the Committee on New Sources of Revenue in its report, "is far in excess of any possible economies in administration that can be made effective under existing conditions."

This is as far as we have gone toward the solution of a problem which I suppose must exist in other cities to a greater or less degree. We have reached an acute realization of the need of relief and we have a set of suggestions to work on. As yet, little or nothing has resulted from them; but with the experience and practices of European cities to guide us—for example, those of Germany, in which land is by no means the predominating source

of revenue—I see no reason why we should regard the present system as irrevocably final. I wish this association might take up the question and help us to find a way out of what at present, in Boston at least, is our chief municipal dilemma.

CHAIRMAN LESER: Gentlemen, the topic is open for discussion for a brief period. If any of the matters mentioned by the mayor have aroused further curiosity or comment, now is your opportunity.

I myself take the opportunity of saying that in reference to the motor vehicle tax, there is an arrangement by which the City of Baltimore receives one-fifth of the motor vehicle license fees that are paid to the state, and that is because this tax is used for the building of roads and is an offset to that. The city is given one-fifth of the taxes, in addition to which certain highways—main arteries, as it were—running into the city and through the city, are treated as state roads and are improved at the expense of the state fund, to which I might say, incidentally, the City of Baltimore contributes from two-thirds to three-quarters; so, it does not by any means get back what it pays, but it does get apparently a fairer share than the City of Boston.

PROFESSOR CHARLES J. BULLOCK: Perhaps due to his modesty, Mayor Peters has not told us anything about the city debt in Boston. I think it would be very interesting to the members of the conference if he would tell us in a word what the movement of the city debt has been in Boston during these recent years.

MAYOR PETERS: The city debt in Boston has risen to pretty large proportions. It consists of two forms of debt, one a debt covered by our building of subways and tunnels. These were leased to the elevated railway at rentals which were used to retire the bonds; the other was a debt covered by the general municipal expenditures. Up to six or seven years ago that debt had steadily increased, then it hung about the same, and I am pleased to state in answer to the question that I have succeeded in three and one-half years in reducing the net debt of the city by six million, which is a step toward getting us in a sound financial condition; and we hope to get fully as good a result at the end of the next year.

CHAIRMAN LESER: It occurs to me there may be something said on the subject of this municipal sales tax. We know what a stir was made by the proposition to introduce the sales tax for the federal government; you know from the discussion today what interest was aroused by the experiment in the sales tax in West Virginia; and now we have the third proposition, something positively novel, so far as I know, of a tax on retail sales for a city. The chair will be glad to recognize any one.

WALTER H. KNAPP of New York: In New York the motor vehicle tax, as it is called, is distributed three-quarters to the state for the maintenance of the state highways, and one-quarter to the counties that produce it or pay it. In other words, twenty-five per cent of the fees paid by residents of each county is returned to that county for the improvement of town highways, and New York City and the other cities share in precisely the same way as the other counties of the state, so of course there is a very considerable revenue from even the present small fee. I understand, however, generally that the automobile association object to that system, that is, they have asked virtually that the entire revenue from the motor vehicles be applied to the maintenance of state highways, but the rural representatives devised a scheme of distribution so that in the smaller or rural counties, twenty-five per cent goes to the maintenance of town highways and twenty-five per cent to the general fund.

CHAIRMAN LESER: Isn't it a fact, Mr. Knapp, that the return is in some measure a compensation for the local tax which was taken away by exempting the motor vehicles from local taxation?

MR. KNAPP: Motor vehicles, except commercial vehicles, have never been subject to local taxation, that is, so long as they have had a license fee. That is in lieu of property tax.

WILLIAM H. KING of New York: I am in the law department of the City of New York, in charge of the division of taxes, and many of these problems to which Mayor Peters has referred have been even more burdensome in New York City. With the growing needs of the community, as in every great city, the tremendous increase in population, the demands the people are making for more and more expenditures by the city, and with mandatory legislation requiring expenditure, the city has been confronted by an increasing budget and at the same time by diminishing sources of revenue. The situation has now got to be in New York City that the tax burden rests mainly upon real estate, so far as the local taxes are concerned, to such an extent that there have been repeated efforts on the part of taxpayers' associations to pass legislation which would limit the rate of taxation of real estate. As it stands today, the local assessment includes real estate—that means land and buildings, and also special franchise assessments, which are classified as real estate; and the only other sources are assessments on tangible personal property, which is practically negligible, particularly in view of the continuance in legislation of the right to deduct indebtedness, and finally the bank tax, which is still assessed locally. The other sources of revenue do not properly come under the term of "taxes", because while we have revenues

from markets, and from license fees for theatres and stands, those are all in the nature of compensation for the expenditures required by the city in protecting and supervising them, or else in compensation for the use of property. The only other source is assessments for local improvements, and those are paid by the property owners benefited, in great part, and partly by the city, as a general expense in the budget. They are more in the nature of compensatory payments. So we have come down now principally to the land tax. That is due to the fact that the legislature has been continuously taking from the city sources of taxation for the benefit of the state. We formerly had assessed locally corporations—capital stock and surplus—capital invested in business by non-residents—partnerships and individuals—and foreign corporations. All these have now disappeared, with legislation requiring the payment by corporations of the franchise tax, based on income, to the state, and by individuals of income tax payable to the state. It is true with respect to both of these, that a portion is returned to the city. That is then the tendency of legislation, and it does seem to me that this conference might well consider the result of such tendency in legislation. While it may be said that the state tax commissioners having general purview of the subjects like corporation taxes and income taxes, have concentrated the work and made it more efficient, in the case of large municipalities where they build up machinery for imposing assessments, such legislation, taking sources of revenue from the localities, is on the one hand creating the possibility of extravagance in state government, and on the other hand is taking away from the individual resident the direct interest which he has when the assessments are made locally. It seems to me, as has been suggested here in the conference, that it would far better, except in those cases of indirect taxation where the states could best perform the duties of assessment, if the assessments were made locally as far as possible, and the necessities of the state for additional taxes, other than those such as inheritance taxes, license fees, and so forth, should be obtained by a direct state tax. As has been said here, that is a direct check on the expenditures of the state. The fraction of the tax rate necessary for the budget item of the direct state tax, is shown, and the responsibility for the expenditure, it is known, is the state, and not the city. The other criticism of the local assessment, that the state tax commission could more properly administer the law and return a revenue to the cities, is met by the fact that wherever you turn over to the state such sources of revenue, the taxpayers immediately lose interest and do not think of the tax as a local direct thing. These suggestions, while not stating statistics, are subjects that should be considered in legislation. It is more legislation that we have to fear than administration, in adjusting municipal revenue.

MR. KNAPP: May I ask Mr. King if he can tell us how the revenue derived from the personal income tax, which goes to the city of New York, and from the corporation four and one-half per cent tax, compares with their receipts under the former method of assessing personal property. As I recall it now, the present income tax is divided fifty-fifty to the localities, and distributed on the basis of assessed value, and the city is assessed nine billions or a little over, and the total assessment of the state is about fifteen, so that three-fifths of the one-half of the personal income tax goes to the City of New York, which would be around ten million, ten or twelve millions.

MR. KING: I may say that that may be true, nevertheless it has resulted in a certain source of revenue to the state with respect to a subject which was formerly considered local, and if the criticism is, as I was about to say, that the administration of the law under the old personal property tax was inequitable and should be changed, that could of course be cured, not by turning over to the state board the taxing of corporations, but by leaving such taxes where they were in the beginning, with the municipalities. What was really needed was a more simple system of making the assessments, a simple tax law, a rule by which every one could measure. Such a tax as we have in the bank tax, which is fixed at one per cent of the total of capital stock, surplus and undivided profits, levied proportionally against the shares of each shareholder, paid by the banks and collected by them from the shareholders. There is a tax which is admirably suited to local administration. Banks are institutions producing steady revenue; there is very little litigation, and it is my idea that if some such scheme were adopted for the local assessor which would bring back to the individual taxpayers of the city their interest in local government, it would also remove the tendency of the state to extravagance in obtaining new sources of revenue, the state requirements to be met by a direct state tax.

CHAIRMAN LESER: I am sorry to say our time is limited. We have other subjects in addition to that on which the mayor addressed us. He tells us that he is obliged to preside over an important meeting at noon tomorrow, and being a descendant of a minute-man, he is going to be there on the minute. We are very much obliged to you.

Now, we have ten minutes left on this subject of municipal revenues and we are to hear from James F. Gannon, Jr., Director of Finance of Jersey City.



## SOURCES OF MUNICIPAL REVENUE

J. F. GANNON, JR.

Director of Revenue and Finance of Jersey City

The subject of taxation from this time forth will occupy an ever-increasing share of the attention of public officials. The reasons for this are twofold. First, the enormous expenditures of the war have created such a vast public debt that the necessity of raising the interest and sinking fund to discharge this debt will require the national government to raise several times the amount of money annually which was raised prior to the war. In the next place, the expenses of our state and municipal governments are continually increasing, both from the growth of population and from the higher standard of service demanded by modern living conditions. Therefore national, state and local authorities are confronted with an ever-increasing necessity for more money, which means that the subject of taxation will be forced more than ever heretofore upon public attention.

The question, therefore, which confronts us is how to raise the money needed for these vast national, state and municipal expenditures in the most just and at the same time most practical way. Let us consider the possible sources of taxation revenue.

The tariff and internal revenue taxes as sources of revenue belong exclusively to the national government under our present system. The field of income and inheritance taxation is open to the national and state governments. It is already in use by the nation and by many of the states. The taxation of real and personal property is a source confined to the states and the municipalities. Under the constitution no practical way has yet been found to tax the land by the government, owing to the constitutional provision that treats a land tax as a direct tax and requires it to be apportioned among the states according to population. There are, however, several bills in Congress designed to get around this constitutional provision and make the land of the country subject to an annual tax.

I can render the best service in the discussion of these problems by confining myself to the problem of municipal taxation, which is the field of my personal experience as the official in Jersey City in charge of taxation.

I address myself, first, to the subject of personal property taxation. It is my judgment from the experience that I have had and from such information as I have been able to obtain from other taxing officials, that the attempt to levy taxes upon personal property is everywhere unsatisfactory. It is practically impossible to levy an equitable and just personal property tax in any city of considerable size.

The reasons for this are plain. The great bulk of the really valuable personal property consists of or is represented by various forms of securities. It is extremely difficult and practically impossible for taxing officials to locate these securities, and when they are located there is the additional difficulty of a just appraisal of their values. All statutes requiring citizens to make known the amount of the securities thus held under compulsion of penalties for failure so to do, have so far proved unavailing. If it were possible practically to locate the amount of the securities held by each citizen, all citizens who could do so would promptly change their residence to some locality where no law requires the disclosure of such property, or where the taxing officials treat the law, if it exists, as a dead letter and make no real effort to enforce it.

Another difficulty in personal property taxation arises from the fact that in the houses of the rich it is extremely difficult for the ordinary appraiser to make any intelligent valuation of the household effects. Paintings and various other objects of art with which the houses of the rich are adorned cannot be appraised intelligently except by experts, whereas the ordinary possessions of a family in moderate circumstances can be appraised. The result is a glaring inequality in such assessments.

Another difficulty in personal property taxation is found when applied to the levying of the tax upon the stock in trade of merchants and manufacturers. This is a tax that all economists agree is shifted by the person who first pays it, to the ultimate consumer of the goods. Its effect, therefore, is to put the burden upon manufacturers and merchants. We again here encounter the extreme difficulty of intelligently valuing merchandise in its various forms and in its finished state. The result is everywhere an inequitable valuation, and the small merchant and manufacturer invariably pays more than his proportion of the tax. The tendency also is for manufacturers to locate their plants in states and localities where the law or the enforcement of it in practice rests most lightly upon goods in process of production or exchange.

We had a very illuminating illustration of this in New Jersey. In Perth Amboy is located one of the great smelting plants of the country. It is the practice in this trade for smelting plants to receive consignments of ore for treatment from different parts of the country. The title to this ore remains in the consignor during the process of treatment at the smelting plant, nevertheless the property, when it was in the locality at the time the taxing officials made their annual assessments, was subject to taxation. If this tax was assessed against the consignor of the ore he would promptly avoid it by consigning his ore to the smelting plant in another state where no such tax was levied. If to avoid this loss

the smelting plant pays the tax, the result either destroys the profit accruing to the plant from the smelting service or so impairs this product as to threaten the life of the business. The great smelting plant at Perth Amboy was by this law actually threatened with extinction, and in order to preserve it the legislature of the State of New Jersey was forced to pass a law exempting this class of property from taxation.

It is obvious that the same influence is working, although not in so marked a degree, in the case of every tax levied upon the personal property of manufacturers and merchants.

This consideration alone will in the end result in a competition between states and municipalities to attract manufacturers and merchants by offering the inducement of a partial or complete exemption from the taxation of personal property.

In my judgment the operation of this competitive influence, added to the utter impossibility of a complete assessment of personal property and the manifest inequality in such assessment which prevails everywhere, will in a comparatively short time lead to the final elimination of personal property taxation as a means of raising revenue. From my experience and study I have become convinced that we ought to put an end to the personal property tax.

One of the difficulties which stands in the way of the prompt abolition of the personal property tax is the necessity resting upon public officials to raise the necessary money to defray municipal expenses. The municipal officers are reluctant to give up the personal property tax, inequitable as it is, until they can see clearly where they are to get the money by other taxation which they lose by the abolition of the personal property tax. These public officials are so influential with the legislature that as a matter of practical politics before we can abolish the inequitable personal property tax, we have got to show these officials where they can recoup the losses occasioned by the abolition of this tax. In our state the legislature has appointed a commission with instructions to draft a law abolishing the personal property tax and substituting an income tax therefor. Such a law will be presented to our legislature this winter. If such a statute can be worked out it will meet the practical objection raised against the personal property tax by the public officials of the municipalities.

It would seem clear that if we abolish personal property taxation the amount thus lost to the city would have to be made up, if no other change is made, by increasing the rate of taxation upon land and buildings. But this outcome encounters two practical objections. One is, that most taxing officials, being subject to reelection, instinctively oppose any proceeding which will increase the tax rate because they feel that the public will construe the increased rate as an evidence of official incapacity or maladministra-

tion. Another reason is that the public taxing officials cannot visualize what would be the effect upon the community of increasing the taxes upon land and buildings, and they hesitate to try the experiment. As a rule such men are not students of economics but are practical men, and work under the limitations of their natural experience.

For all these reasons the probability is that we cannot succeed in abolishing personal property taxation in the near future unless we provide in the same legislation another source of revenue to take its place. This is what we are trying to do in New Jersey. A state commission has been created by the legislature and instructed to report to our legislature next winter and prepare a law exempting all personal property in the state from taxation and substituting therefor an income tax, which, though collected by the state, will be apportioned among the municipalities in such a way as to make up to each municipality the amount lost by the abolition of the personal property tax.

One of the most important propositions in the realm of taxation which we must consider is the suggestion that buildings and improvements be wholly or partially exempt from taxation, and that ultimately the municipal revenues at least should be raised solely from the value of land. It is undeniable that this idea is making slow but steady headway. There are many arguments to support it. It is by all odds the simplest and most economical tax to levy and collect, and as the value of land is comparatively easy to ascertain with approximate certainty, such a tax is likely to be the most equitable in actual administration. The incidence of such a tax is also to be considered.

Under our existing tax system it is profitable to hold land out of use, in the expectation, generally realized in the growing cities, that the improvements put upon the used land, will gradually make the unused land held for speculation extremely valuable. The argument has much force that this value thus imparted to the unused land is a value created by the community and not by the owner, and therefore belongs to the community which created it. It is difficult to answer this argument.

We have had in Jersey City a very conspicuous illustration on this point. After the McAdoo tunnel under the Hudson River, connecting Jersey City with New York had been built, a station was opened in the residential section of Jersey City. The tunnel service resulted in bringing to this section a tremendous number of people from New York. The land in the vicinity of this station has gone up at least ten times in value in the last ten years, and speculators have made great sums in the rise of these values. Arthur Brisbane, the well-known writer, bought parcels of land in proximity to the station at an aggregate price of \$30,000. He

leased this land for the erection of one-story retail stores for \$10,000 a year and taxes for a twenty-one year period. By this transaction he gained nearly a quarter of a million dollars.

But this money comes from somebody. It comes from the people who purchase the articles sold in these stores. It is difficult to see how the public gains by allowing Mr. Brisbane to levy a tax of one-quarter of a million dollars upon a class of people in our city to whom he renders no service whatever. If those people are to be taxed, the argument that the tax should go to the municipal treasury seems unanswerable. If, however, the buildings and personal property were exempt from taxation, the tax rate in order to raise the money for the municipal budget would have to be so high as to absorb the bulk of the increase in value of the land. Therefore nobody could hold land out of use with the hope of any profit. The effect would be that land would tend to be held only by those who put it to its most profitable use. This would tend to make land ultimately cheaper so far as the purchase price went, and would naturally stimulate improvements and ultimately decrease rents.

I consider this idea to be worthy of very careful investigation and consideration. It is particularly advisable that every bit of practical experience bearing upon the idea should be marshaled and studied.

The housing shortage in New Jersey caused the legislature of 1919 to pass a law exempting from taxation for the period of five years all buildings constructed within two years from the date of the law.

In New York, as is well known, a similar law was passed, but the term of the exemption was ten years. The effect in that city as shown by the facts should be carefully studied in this connection.

Jersey City is perhaps more interested in testing the soundness of this plan of exempting improvements from taxation than any other community in America. Unlike any other city in this country, Jersey City is the terminus of the great trunk line railroads. Its water front has been almost wholly absorbed by these railroad terminals. This water front, being upon the Hudson River and opposite the great city of New York, is enormously valuable, both for railroad and for general shipping purposes. It is by all odds the most valuable part of our city, and in area it is about one-third of our city. It is well known that the value of the improvements upon railroad terminals is very small compared to the value of the land upon which these terminals stand. The improvements are bulkheads and filling in to make a level surface upon which are a net-work of rails with a passenger station of some cost and a freight station of practically little cost. In a general way in Jersey

City if we compare our shore front lands utilized by railroad terminals with an equal area of land in our built-up sections, it will be found that the value of the improvements upon railroad terminals is about one-third of the assessed value of the land, whereas in the developed section of the community of a similar area, the value of the improvements is at least three times the value of the land. The effect of this is that one-third in area and value of our Jersey City territory, devoted to the most profitable use, yields in taxes only about one-quarter of what other improved property pays in taxes. Obviously what the railroads save by this system the improved property of the rest of our city has to pay in addition to its proper share.

The present system, therefore, works a greater hardship upon Jersey City than it does upon any other city in this country. If the idea of the tax exemption of improvements is sound, Jersey City would gain more from its adoption than any other community in the United States.

While I do not believe that the single tax is a panacea for all social and economic evils, I nevertheless profess to be convinced that its partial application in New Jersey has been attendant with such beneficial results, that the subject of its application elsewhere should be given serious consideration by this conference.

CHAIRMAN LESER: About fourteen years ago there was a proposition in my state or city to establish a bureau of legislative reference, to be modeled after a similar bureau established in Wisconsin, and then directed by the late Charles McCarthy. In connection with that project a delegation came down from Wisconsin to Baltimore to advocate the departure. Heading that delegation was the gentleman who is shortly to address you. Years before that he had been an honored resident of my city, a prominent member of the faculty of Johns Hopkins University, and had taken part in a public-spirited way in a very important tax movement in 1888; in fact he was the principal author of the report of a special tax commission, which in many ways has served as a model and standard for the scores of similar reports issued since then. When reference was made to Dr. Ely's part in the tax history of the state by the then mayor, and to the report he had written in 1888, Dr. Ely modestly said: "I do remember that I did write such a report or helped to write such a report, but if there is any copy left, it must be on some shelf under about an inch of dust." I had the pleasure to tell him later that there was one copy which I owned and which had not any dust upon it, and I am proud to admit that what little I have learned about taxation, and what inspiration I ever got to tackle this thing—because I was such a greenhorn in the beginning that when I was appointed to my position I did not even know where the office was located—

what inspiration I got was from reading that learned treatise by the gentleman who will now address you on land valuation.

## THE TAXATION OF LAND

RICHARD T. ELY

Director, Institute for Research in Land Economics, and Professor  
of Economics in the University of Wisconsin

### PREFATORY NOTE

This paper on the Taxation of Land is the address I gave at Bretton Woods in September last, only somewhat expanded. No one can be better aware than I, that it is scarcely more than a sketch and at many points gives the results of thought and research, without presentation of all the steps by which the conclusions have been reached. I had hoped to add further statistical data, but I have made undue demands on the patience of our secretary by the present delay and have gone beyond the usual limits of space. Later, I hope to enlarge this paper into a small book and add statistical data and otherwise expand my treatment.

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### INTRODUCTION—NEED OF COOL THINKING

No subject in the field of taxation involves the one who attempts to treat it scientifically in more difficulties and perplexities than the taxation of land, because the taxation of land has become quite as much a social problem as a fiscal measure. To many people the taxation of land is now a veritable religion, with promise of social salvation. This renders it more difficult than it would otherwise be, to treat the subject with that dispassionate calm required for a scientific attitude of mind. We must divest ourselves of prejudice and passion and approach the question with a perfectly open mind. Doubtless, however, it is less necessary to give this caution to an audience gathered together under the auspices of the National Tax Association than it would be to many other groups.

#### I. NEED FOR REVENUE

##### *A. No more Surplus Revenue as in the Past*

Let us first of all consider some underlying facts which have to be taken into account in dealing with any problems of taxation at the present time. The most outstanding of these facts is the need of public revenues. There was a time in our history—a time so recent that it can be recalled by men who are still in middle life—when one of the pressing problems of federal finance was the problem of a yearly surplus. When an American, living in Europe at that period in our history, called attention to the difficulty of dealing with surplus revenues, the ordinary European looked at him with open-eyed wonder and appeared to cherish doubts as to his veracity, though politeness prevented expression of these doubts by anything except involuntary facial movements. That was a rare period in the financial history of the modern nation, and to us Americans now it seems something very remote in idea, if not in time. City, state, and nation, all are now struggling with the problem of growing expenses and inadequate revenues.

##### *B. War Expenditures*

War is undoubtedly the chief cause of the staggering growth of public expenditures. We would like to put war down as a tem-

porary cause, and in our budgets we may possibly place it among "Extraordinary Expenses". Yet war as a cause of public expenditure has characteristic features of permanency, although these features of permanency are not precisely the characteristic features of those expenditures which are part and parcel of general social evolution.

War expenses should diminish with increasing rapidity, provided we maintain peace among the nations and law and order within the nation. While, however, we hope that expenditure due to war will not occur in the future, it would be folly, in framing long-time fiscal policies, to overlook war. Since the world began, war has been going on a good part of the time and has been a frequent occurrence even in our own exceptionally and happily situated country.

### *C. Welfare Expenditures Increasing*

But we have certain normal increases in public expenditures altogether apart from war, and even an era of peace and prosperity with good government must bring large increases in regular normal expenditures. That those expenses of our federal government which we could place under the heading of "efforts to promote the general welfare" are only a very small percentage of all public expenditures has been admirably shown by the late Dr. Edward B. Rosa in his monograph on the "Expenditures and Revenues of the Federal Government," which appeared in the *Annals of the American Academy of Political and Social Science* for May of the present year (1921). Nevertheless, these expenditures are increasing rapidly, even in the case of our federal government, and, as Dr. Rosa has shown, they ought in the future to increase very greatly, as they surely will. But in the case of our state and local political units, especially cities, they form the biggest items in our budgets, and they are increasing by leaps and bounds. A whole hour could be spent in simply enumerating the expenditures made to promote the general well-being of the community, to advance civilization, and to diffuse as widely as possible its benefits. We may think of education and its endless ramifications, of developments of departments of agriculture with their various features, of expenditure for pleasure and recreation, of expenditures to promote health and guard against accident, and so on. We can scarcely take up a daily paper without seeing mention of some new line of social activity, actual or proposed, which involves increasing public expense.

## II. WIDELY DIFFUSED TAXATION DEMANDED BOTH BY THE NECESSITIES OF THE SITUATION AND BY SOCIAL JUSTICE

### *A. The Tendency of Liberty as well as Honest and Excellent Administration to Increase Taxation*

Long ago a great French political philosopher, Montesquieu, laid it down as a law, invariable and without exception, that liberty increases public expenditures. If there is an exception to this law it would be difficult to find it. Some have supposed that honesty and excellence of administration would decrease public expenditure. An impartial survey of history, however, will show that the opposite is the case, and that for reasons not difficult to ascertain. Economic evolution and advancement in knowledge bring expansion of social relations, and that involves common needs, to be satisfied by public agency. Honesty and excellence of administration strengthen the arguments for those sorts of desired common action that carry with them increasing public expenditure.

Perhaps it is well to add a word at this point to avoid possible misapprehension. It might not be unnatural to raise the question: Will dishonesty and poor administration decrease public expenditures? It is perfectly obvious that in themselves honesty and excellence of administration may decrease expenditures for some particular purpose. It is quite possible to find governmental activities which could be performed equally well or better with less than the actual expenditure involved. What we are here talking about, when we say that honesty and excellence in administration increase public expenditures, is the long-time effects. Just as we improve administration, we remove objections to further development of public functions. I suppose one who, during the World War, was as thoroughly pro-Ally and anti-German as one could well be, may dare to take an illustration from Germany. After all, there are a great many good things in Germany, and one of the best, in my judgment, was the public administration. Can anyone familiar with German life doubt that this was one reason for the extension of governmental activities, with growing public expenditures in that country? On the other hand, poor and dishonest public administration in Russia belonged to those general social causes retarding the growth of general welfare activities with their attending public expenditures. A few years ago one could start in the heart of Russia and, traveling westward, find a very general increase of such expenditures just as one got into the more and more highly civilized regions.

What we may do by excellence in administration and honesty is to get more for each dollar expended, and in this country if we work along this line we shall secure the largest results. Past experience does not leave ground for hope that public expenditures,

except those connected with the World War, are likely to decrease, and even what can be accomplished in this direction may easily be exaggerated.

It was about 1828 that a French Minister of Finance in the French Chamber of Deputies said something like this, "A budget of one thousand million francs! Behold it! contemplate it, gentlemen! You will never see its like again." And France has never seen its like again. But not because expenditures have gone down, as the Minister intended to predict, but because they have steadily increased from that time until no one even dreams of so small an annual budget as one of a thousand million francs, even in time of peace. And during this period, it is probable that honesty and the quality of public administration in France have, on the whole, shown no deterioration, possibly even have improved, while liberty has grown.

*B. Benefits of the Public Services More and More Widely Diffused without a Corresponding Broadening of Taxation*

We have, however, a peculiar situation which seems to have attracted little attention. The things of general interest which we are doing, and are being urged to do, are very generally things which are remunerative to a great many of the people; things that bring great return to the individual and to society. But we have not evolved methods for getting into the public treasury a sufficient portion of the private and social gains that result from doing these various things. Let us take health and education as an illustration. Let us say a man's earning power is increased \$500 a year by the public education which he receives, beginning with the grade schools and going up through the state university.<sup>1</sup> This increase in earning power of \$500 a year may continue for thirty years, and to any teacher of long experience in a great university this will not seem like an unusual case. We have, however, no special agency for getting hold of any considerable portion of this increment of gain to the individual. If we should take \$200 a year from him he would still be a large gainer. But public sentiment, in the case of state-supported education, is against exacting any considerable fees for the service rendered. As a matter of fact, we could not systematically take the pecuniary gains resulting from higher

<sup>1</sup> That this estimate is not too large will be evident from a comparison of this figure with the figures given by Professor A. Caswell Ellis, of the University of Texas, in the bulletin *Money Value of Education* (U. S. Department of the Interior, Bureau of Education, Bulletin, 1917, No. 22). This brings together the results of a number of studies showing the increase in earning power that is due to public education, whether the employment is industrial, commercial, or agricultural.

education; they are, for one thing, too irregular, standing in no certain relation to the amount expended on the individual; and, moreover, we should not attempt to do so, and that for a variety of reasons into which we cannot now enter.

We are doing more and more to guard health and safety of life and limb, and as a result many a wage-earner continues to receive good wages for years who might otherwise become an invalid and a public charge. But we have devised no means of getting a contribution from the individual who receives this gain except through our general measures of taxation, and these are unsatisfactory and stand in small relation to benefits conferred by these special expenditures. Here, again, we cannot devise any measures for securing proportionate returns from individuals benefited and we should not attempt it.

We are now being urged to establish agencies to give special care to expectant mothers and to women when they become mothers and to their children. It can easily be figured out that the benefits to individuals and to society will run up into the hundreds of millions, if not billions, annually. But we have not devised revenue measures for bringing into the public treasury a considerable portion of these benefits enjoyed by individuals. And as to direct proportionate taxation for this purpose—once more we could not and should not.

The illustrations cited fall largely within the general field of education and that field of public and preventive medicine which is being extended very rapidly and, in the opinion of very many, ought to be extended until its services are offered to all those desiring them, just as public and tax-supported education has become universal in its scope; but by no means excluding private activity, which should in medicine and education have free scope so long as standards of excellence are maintained. Public medicine would prevent disease, restore health, and decrease pauperism. Illness is enormously expensive to the individual and generally comes at a time of lessened earning powers; often, at a time of cessation of earnings. Then follows the frequently slow period of convalescence, with premature attempts to resume employment; then relapse, illness, discouragement, possibly the fall of an entire family, none too sturdy to begin with, into pauperism. Those who follow hospital cases with care, and workers among the poor, will find this recital a familiar story and may be able to recall concrete illustrations.

Let us suppose public medicine keeps a man at work 250 days a year, at \$3.00 a day, who otherwise might fall into the class of "casuals" and earn on the average \$2.50 a day for 200 days. The difference in earnings is \$250 a year. If we could in some way get from this man \$50 a year he would be still a great gainer; but

it is only through indirect taxes that he can contribute to public expenditures. The experience of the world shows this.

Fees may be suggested, and this neglected field of public finance should be cultivated theoretically and practically. But in this class of cases we cannot do very much to get a return for the enormous public expenditures involved. Fees may diminish service, and of this the clinic of the University of Wisconsin furnishes illustrations. Students do not pay fees for the services of the clinic, and they therefore consult the clinic freely and early in case of indisposition, and as a result the number of days of absences has declined.<sup>2</sup>

We have, as a result of advancement, established enormously high standards for the masses in comparison with earlier standards. But we have not devised a way of getting a return for the costs into the public treasury. Where tangible property results, we have taxation, but inadequate taxation. Where we have an income tax, as in some of our states, the income of the individual is a source of public revenue, but the exemptions are large, and the income taxes do not reach the great mass of people who receive these increasing benefits from public expenditures.

### C. "*Swatting the Rich*" will Not Provide Enough

More and more the idea of "swatting the rich" seems to prevail, but apart from any other bad consequences, such as a violation of sentiments of justice and a general weakening of ethical standards and the inevitable evolution resulting from bringing this idea to its logical outcome in bolshevism, we have the fact that the rich are too few to bear the burden.<sup>3</sup> We may tax them to the point of bringing them down to a common level, but our problem is still an unsolved one.

John Stuart Mill regarded as sooner or later intolerable, a condition of society in which the rich were looked upon as "a mere prey and pasture for the poor". He wrote those words more than fifty years ago, and the situation is now so much worse than it was then that it requires courage to take a stand for fairness to all classes, rich and poor alike; for one is sure to be denounced as reactionary, with strong intimation that one has been perverted by self-interest or even corrupted by powerful forces, the so-called "interests". But to array class against class is the way of social

<sup>2</sup> See *The Foundation of National Prosperity* (Ely, Hess, Leith, Carver) for an illustrative chart, p. 51.

<sup>3</sup> The researches of the National Bureau of Economic Research afford statistical proof. See *Income in the United States*, Vol. I, by the staff of the National Bureau of Economic Research; also Vol. II of the same work, which is soon to appear; cf. also the earlier work, W. I. King's *Wealth and Income of the People of the United States*.

destruction; and the thoughtful person must be filled with alarm when he reflects on the drift of current opinion as reflected in the applause which greets the efforts to pull down the successful, simply because they are successful. The appetite grows by what it feeds on. Our safeguard consists in the development of sound economic thought on the one hand, showing the inevitable outcome of this tendency, unless checked, in general poverty; and on the other hand, in the growth of a sense of justice to all and especially the cultivation of a spirit of fraternity, embracing the community as a whole. Unless we can succeed in doing this, our civilization will perish, not from attacks from without but from rottenness within.<sup>4</sup>

Progress depends on wise leadership, and nothing is so precious as talent; nothing so disastrous as the discouragement and suppression of the gifted. Democracy, to be safe for the world, must be able to enlist the superior powers of the few in the service of the many. This is the economic problem. The ethical problem is to unite all groups, all social strata in the bonds of fraternity. The finest fruiting and flowering of human society depend upon delicate adjustments, and thus far we have seen just enough of this fruiting and flowering to have only an imperfect apprehension of the possible future grandeur of humanity.

*D. Masses have Surplus that can be Taxed*

On the other hand, there is a very widespread ability on the part of the masses—if I may use this expression—to contribute to the public revenue. On every hand we see an enormous surplus of income over the needs of subsistence. A manufacturer of chewing gum has become one of the rich men of our times, and probably no kind of investment has increased more rapidly in the last ten years than that represented by the “movies”. A survey of even a single high school in one of our cities will show that the pupils spend considerable sums for superfluities of doubtful utility. The following data are merely illustrative.

A survey made during thrift week of 1920 in Beloit, Wisconsin, showed that the students of the schools of that city spent about \$62,000 annually on movies, candy, ice-cream, and non-essential entertainment. The per capita expenditure was \$46 a year for high school pupils and ranged from \$6.29 to \$15.65 for the grade schools. Of the \$62,000, \$14,562.20 was spent for movies, \$15,768 for other entertainments, and \$29,536.12 for candy.

Figures for other cities show that Beloit is no exception. La-Crosse, Wisconsin, reported over \$100,000 spent on non-essentials, of which \$50,000 is for candy and amusements of the high school pupils.

<sup>4</sup> See note 7, Appendix.

Among the non-essential articles manufactured in the United States in 1919 were tobacco and its accessories, to the value of \$1,150,826,000; confectionery and ice-cream, \$637,215,000; beverages and accessories, \$615,511,000; articles of adornment, \$275,035,000; musical instruments, \$163,681,000; articles of amusement (sporting goods, toys, etc.), \$115,369,000; perfumery and cosmetics, \$59,592,000; chewing gum, \$51,240,000.<sup>5</sup> Most of these were consumed in the United States, for we exported in that year comparatively little of the articles named. For example, out of more than a billion dollars' worth of manufactures of tobacco and their accessories, we exported less than forty-seven million; while we imported more than eleven million dollars' worth of manufactured tobaccos. The other articles show exports of proportionally small amounts, which were, in many cases, partially offset by imports.<sup>6</sup> It is safe to conclude that we ourselves consumed nearly all of these non-essential commodities, totaling in value \$2,904,788,000.

Baseball attracts enormous crowds and has become a great business undertaking. Prize fights are a favorite diversion, and if greatness were measured by newspaper space, no hero in the world's history has ever surpassed Dempsey. Men flock to a prize fight from all parts of the United States and spend more for a single seat at one prize fight than they think they could afford for books in five years. The official figures of the Dempsey-Carpentier fight in Jersey City on July 2nd of this year, 1921, show receipts very considerably exceeding one and a half million dollars.

We have, then, evidence on every hand of very large and very widely diffused surplus wealth from which contributions towards public expenditures could be exacted, and that without necessarily causing any harm or any real suffering to the contributors. Only to a very limited extent is this source tapped. We have, then, a contradiction and a lack of harmony between our progressive programs and our systems of taxation. There is, likewise, a lack of harmony between our administrative machinery and our public needs. We are unable, without ruin, to meet our growing needs by direct taxation, but we must devise systems of taxation which spread abroad among the great masses of people public burdens that have some kind of relation to public benefits.<sup>7</sup>

<sup>5</sup> Figures compiled from the preliminary statement of the Census of Manufactures, issued by the Department of Commerce, Bureau of the Census.

<sup>6</sup> *Foreign Commerce and Navigation of the United States for the Calendar Year 1919*, U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Washington, 1920. Table 3 (Imports), Table 5 (Exports).

<sup>7</sup> See Note 1, Appendix.



*E. Taxes on Consumption and Various Indirect Forms of Taxation must be Employed to Secure a Sufficient Diffusion of Taxes.—Re-examination of Subject of Indirect Taxation Needed*

In Switzerland, years ago, progressive people found that they had to make choice between progressive programs and the abandonment of that large measure of reliance upon direct taxes which they had been inclined to advocate. Switzerland passed over to an increasing use of indirect taxes, as a necessary means of accomplishing the desired progressive programs.

The Preliminary Report of this organization on a "Model System of State and Local Taxation" concludes Article IX, "Taxes upon Consumption", with these words:

"It may well be, however, that at some future time the National Tax Association will do well to appoint a committee to canvass carefully the possibility of supplementing existing sources of state and local revenue by taxes levied upon what may be fairly classified as luxurious consumption."

The time has surely come when such a committee should be appointed, with instructions to report at the next annual meeting of this association.

I am not sure, however, that the suggestion made is sufficiently far-reaching. Taxes should be regarded as necessities. What one pays in taxes should be looked upon in the same light as what one pays for bread and meat. This is a logical outcome of the activities of the modern state and community. Things that the individual formerly did privately are done to an ever increasing extent through public agencies. The man who cannot pay for the services which he receives through private agency we call a pauper. To treat large classes in a community as though they should be exempt from taxation is to treat them as paupers. A man may be poor and still pay his debts. Poor is a relative term, and all who are not paupers should expect, and should be expected, to bear a proper share of the public burdens, and this means a large development of indirect taxation. A man may complain, and perhaps justly—in some cases surely justly—because his income is inadequate to meet his expenses; but he should not complain because he is expected to pay taxes just as he is expected to pay his butcher and his baker. It is really an insult to the workingman to treat him as a tax-exempt person.

If human beings were different from the human beings that are actually found in this world, we could rely, to a far greater extent than we do, upon direct taxes. Let us suppose a proper tax for a wage-earner is \$9, and that he receives \$4 a day, three hundred days in the year. Theoretically, it is possible for him to put aside

three cents every working day and have it ready to pay to the proper authority in January. Practically, it is impossible, as even those who have far larger incomes know by experience. He could, however, pay three cents a day in indirect taxes, as he purchases the commodities and services that he consumes, and not feel the burden keenly. Moreover, it is altogether probable that in the final adjustments he might not find his income seriously curtailed.

Very little has been done in recent years on the subject of indirect taxation. Many of us are accepting theories that are one hundred years old, without any critical examination. Clearly, there is an opportunity for some one, and perhaps for several, to render a distinct public service by a re-examination of the theory and practice of indirect taxation.

*F. A Wide Diffusion of Public Burdens, a Necessary Part of Progressive Policies*

What I have said about a wide diffusion of taxes to correspond in some way (to be sure, in some very rough way) to diffusion of benefits, is conceived of as a part of progressive policies. It is impossible permanently to widen out more and more the strata of our pyramid of population receiving greater and greater public benefits and then to go upwards to the smaller and smaller strata of the population bearing the burdens. To attempt this is moral and economic ruin—meaning, if carried far enough, the downfall of civilization.

What can be done to promote the general interest with a survival of growing prosperity depends upon intellectual enlightenment and the moral sense of the great mass of the people. Many things which would promote prosperity we cannot now do because ignorance, prejudice, class feeling, phrases, and popular clamor stand in the way of true progressive measures. How is it possible to do with respect to the debt of the Allies to the United States, the thing which is regarded by those we generally consider the most competent, as being in our own interest?

Professor T. S. Adams gives good illustrations of the situation in the following quotations from his article on "Fundamental Problems of Federal Income Taxation," in the *Quarterly Journal of Economics*, August, 1921.

"The income tax now fails to reach the majority of the people of the country, who nevertheless have some real capacity to pay, as is revealed by their enormous consumption of semi-luxuries. This fund of taxable capacity I should tap with a number of consumption taxes, both import duties and excises, capable of clear definition and successful administration, such as taxes on tobacco, amusements, sugar, tea, coffee, chocolate, rubber, and gasoline. Such articles should be selected not because their consumption is harmful—I believe in the necessity

of luxuries—but because they represent effective and convenient points at which to tap the taxable surplus of the consumer” (page 554).

“There is a tax which is costless, incapable of evasion, wholly simple, quite productive, and having no particularly evil characteristics of incidence and burden; the proposed increase of one cent in the first-class postal rates. Moreover, at the present time, the postal service is running at a deficit. Yet has this tax any chance of adoption at a time when the country is clamoring for ‘simple taxation’? Practically none. Have the simple and productive ‘breakfast table’ taxes any chance of a respectful hearing? None. They are ignored by the people, by both political parties and by Congress” (page 555).

All this is a necessary prelude to any modern tax program. This is our prolegomena to the Taxation of Land, and we now pass over to that.

### III. LAND AS A BASIS FOR TAXATION—PECULIARITIES

#### *A. Extreme Positions on This—Neither a Sound One*

##### 1. Land as a Source of Burdenless Taxation

In the discussion of land and taxation we find two extreme positions taken. There are those who put land in a separate class by itself, as a source of unearned increment to be taken for public purposes. Many, still blindly groping about for magic, are seeking to get something for nothing and want to discover burdenless taxation. All taxation represents effort on the part of somebody and is a load to be carried. There may be controversy as to who should bear the load or as to how it should be distributed, but we cannot make much progress until we clearly recognize that taxation means a load to be carried and that the search for burdenless taxation is the pursuit of a will-o'-the-wisp.

##### 2. Land and Capital Considered Identical

Another extreme is represented by those who treat land and capital as precisely one and hold that the same rule applies to all kinds of property without differentiation. This latter extreme, however, will scarcely find adherence among economists and it may be difficult to find any economist of standing who will accept the first extreme position.

The landowner has to bear taxes as truly as the owner of capital has to bear them; and it is generally held that he is less capable of shifting them. There is, however, a good deal of shifting of taxes upon land, just as there is a good deal of distribution of rent. When the tax on land is increased the landowner feels the burden; if it is reduced he feels the relief. If the burden is a heavy one he feels it keenly; if the source of income dries up, as it has this

year for many a farmer, the tax burden under our American system of taxing the selling value of land still continues, and in many cases it is not too much to say it is crushing.

When investments are made, all taxes, as far as they can be foreseen, are taken into account. Liberty bonds, land bank bonds, municipal securities, mortgages — all afford familiar illustrations. Daily quotations in newspapers supply ample proof. It is certain that capitalization of taxes takes place in all cases of income-producing property so far as it is known or anticipated. If the taxes on land are more stable and more lasting, they are discounted or otherwise capitalized to a greater extent than they are in the case of the less lasting taxes. If less stable and less lasting, as they are in many cases, they are capitalized to less extent.

*B. Land as Investment Yields Small Returns, Due to Great Competition for Land Ownership. Buildings also under Normal Conditions Usually Yield Small Returns*

Another point to be considered in the discussion of the taxation of land is that land yields a small return upon investment and, in general, less than approved investments of capital. Apparently this has been generally overlooked by economists. However that may be, George Tucker, of Virginia, in his *Political Economy for the People*, published in Philadelphia in 1859, deserves credit for clearly stating the proposition that land gives a smaller return in percentage than capital. He uses these words:

“It may be remarked that land, including lots and houses in town, yield less than the average profits of capital, partly on account of the greater security of the capital, and partly because, being visible to all, and appreciable by all, they confer on the proprietor somewhat more of influence in society than personal property.”

But in addition to these two, there are other reasons why the competition in landownership is especially severe. Land is more inviting as an investment to the great mass of people. The ordinary man feels that he is facing the unknown when he considers any one of a large proportion of the possible investments in capital; and he is very right in this feeling. He knows that bank stocks carry double liability, and when it comes to passing judgment upon the management of railways and public utilities, generally he appreciates the fact that the doings of boards of directors are beyond his power of critical judgment. He does know, however, that these great undertakings have, in many cases, gone into the hands of receivers. He fears manipulation on the one hand, and on the other he is beginning to appreciate that taxation and regulation of these enterprises by commissions, national and state,

is leaving small margins of profit. In addition to these perfectly legitimate enterprises, we find the appeals of the unscrupulous; and wildcat speculation and "gold bricks" unhappily deceive a good many, but happily not the great mass of people, who turn to the land. Land is something tangible; men can see it; they may walk on it; they exercise judgment about it. While land selection is difficult, we have an increasing number of agencies helping men to select land wisely, particularly agricultural land. Unsound titles have brought loss in the past, but through land registration acts (Torrens Acts) and title and insurance companies this risk is being overcome.<sup>8</sup> The normal man happily has the love of the earth, which makes him desire landownership. He wants a little piece of the earth as his own and desires to take the responsibility involved in ownership.

Buildings, also, in normal times usually show low return. Men, rich and poor, love to build. The normal man is attracted by constructive effort and a return of four per cent is often a sufficient lure.

We have many proofs of the low return that land yields, or let me say real estate, so as to include buildings. One proof is the difficulty of paying for purchases of land with borrowed money because the interest rate exceeds, generally, the rate of return on land and on buildings, although this holds true to a less extent for buildings.<sup>9</sup> New Zealand and Ireland afford illustrations. Government loans have been found necessary in both countries to make it possible for land users in desired numbers to acquire ownership when they did not start with a considerable amount of capital. It has required government credit to get interest low enough to overcome the comparatively small rate of return on land. And, also, it may be remarked, one reason for the inadequate housing, in many cases, is because the rate of return on houses has been so low. However, in a good many places before the World War the love of construction was so great that even with the low return on real estate there was an oversupply of housing. In great cities like New York it has been possible to borrow large sums from insurance companies and trust funds, at a very low rate, and this has aided the construction of buildings in such centers.

<sup>8</sup> Note 2, Appendix.

<sup>9</sup> See two illuminating articles bearing on this statement: "Can Farms of the United States Pay for Themselves?", in the *Journal of Farm Economics*, Vol. II, pp. 177-193, and "Size of Initial Payment Required to Permit Purchase of a Farm in a Given Time", in the same periodical, Vol. III, pp. 122-127, both by George Stewart.

TABLE VI  
COMPARISON OF LAND INCOMES AND OTHER INCOMES SHOWING PORTION  
TAXED

	Percentage Earned on Investment		Proportion of Income Taken in Taxes
	Before Taxes	After Taxes	
4575 Wisconsin rented farms, 1919* ..	7.0	5.7	18%
18 New York City blocks, 1891-1921 †.	8.0	6.3	22%
All national banks, 1919‡ .....	15.4	12.1	21%
31,045 corporations, 1917 §.....	21.7	16.9	22%

*Note.*—This and the subsequent statistical tables and charts appearing in this article were prepared by Mr. A. J. Altmeyer, Chief Statistician of the Wisconsin Industrial Commission, for whose assistance in this connection the author is deeply indebted.

(For chart VI, see page 244.)

#### *C. Land as Poor Man's Rather than Rich Man's Investment*

Passing on to another point in our survey, we notice that in very many places, in our own country at least, the wealthy appear to be less and less inclined to make investments in land. Few of the men of great wealth whose names are familiar to us have made their money in land. It may be observed that we are speaking particularly of agricultural and urban land, for mineral land and

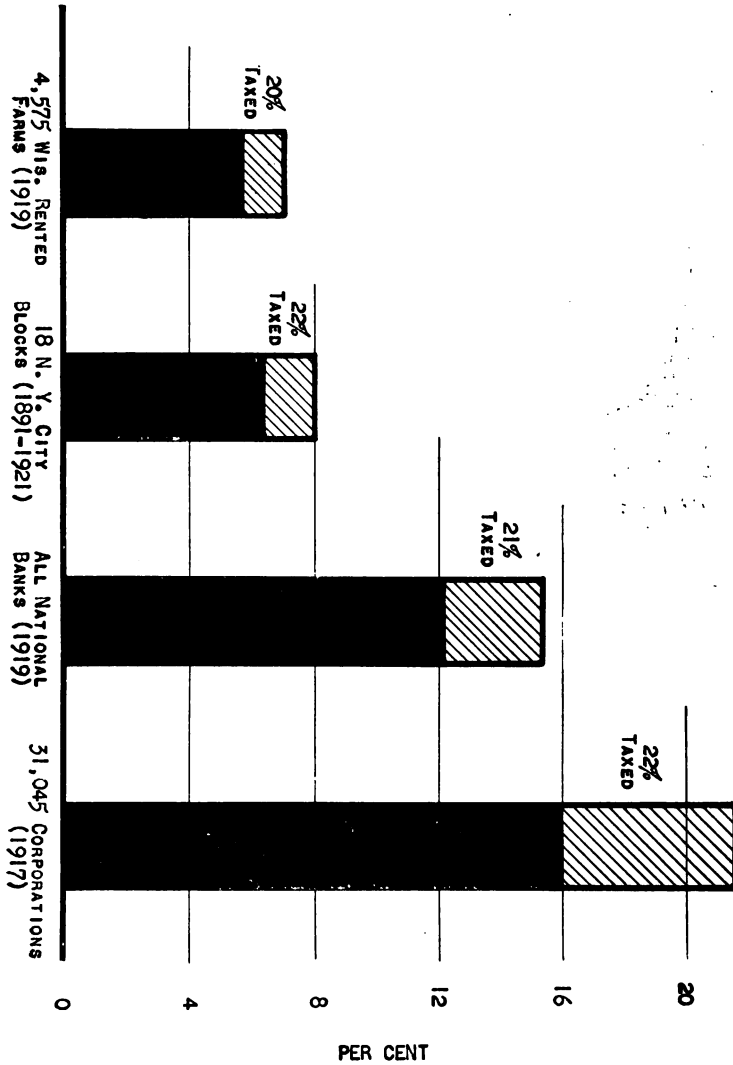
\* Reports made to Wisconsin Tax Commission. Includes farms rented for cash and on shares. Percentage earned on investment is believed to represent gross returns in most cases, although wording of questionnaire is vague. The state and local advalorem taxes amounted to 18 per cent. The prices of farm products were high at this time and the returns higher than in normal years.

† Based on an investigation by Dr. Arner of Columbia University. The percentage earned after taxes means only after advalorem taxes. The average tax rate on assessed valuation during the period was .0195. The ratio of assessed value to true value rose from 67 per cent to 100 per cent during this period. Since the bulk of the taxes was paid in recent years, the tax rate on true value would not be less than .0175. The return before taxes would then be .0625 plus .0175, or 8 per cent.

‡ Taken from report of Comptroller of Currency for 1919. Rate of return is based on capital and surplus. "Taxes" includes taxes levied on the shares, which are technically not a tax on the banks themselves.

§ Taken from Friday's *Profits, Wages and Prices*. Since these are old corporations that earned 15 per cent or more on their capital stock, it is true that the return is greater than the average for all corporations. However, in 1918, 7000 corporations taken at random earned 15 per cent net on capital stock, according to Friday. Unfortunately, the income of these corporations before taxes is not given.

CHART VI.  
COMPARISON OF LAND INCOME AND OTHER INCOMES SHOWING PORTION TAXED



forests must be treated separately and we have not time to consider them in this paper. A few years ago the very wealthy men in New York, in many cases, did not even own the homes in which they lived. It is difficult to give statistics and perhaps impossible. I think, however, that very many in this audience have observed the same thing that I have observed; that as men become wealthy they want to avoid putting money into land. Quite recently I met a wealthy man interested in many lumber yards throughout the country who finds it an argument against the purchase of a new yard if it involves the purchase of any land. He says he can give up the yard if it is not yielding a profit, but the land cannot be abandoned without large loss.

Land is the poor man's investment and should be such. All our public policies ought to be framed with this in view. In other words, it should be made just as desirable an investment as possible for him, he should be given every possible help in land selection, and in land utilization; and fraud practised on him should be punished with special severity. Fortunately, we are making rapid and excellent progress in all these particulars, especially with respect to agricultural land. Now it is time to extend like helps to urban land purchasers and utilizers. We must make our country more and more a nation of home-owners.

#### IV. TAXATION AND LAND UTILIZATION

##### *A. Most of the Good Land is in Use—Is Not being Held Out of Use*

Discussion of the taxation of land involves discussion of the utilization of land. It is said that we should tax land in order to bring it into use. This idea, however, that good land is held out of use in large areas is a fiction. Careful investigation made under the auspices of the Office of Farm Management and Farm Economics in the Department of Agriculture, have shown that most of the good land is already in use. I have in mind particularly the researches of Mr. O. E. Baker, and his researches have covered nearly the entire United States.<sup>10</sup> It stands to reason that the good land would be used, because good land in the economic sense is land that has value and men are looking for value. That is what economic activity means.

##### *B. A Great Evil is the Submarginal Land that is in Use*

The truth is that one of the great evils in the agricultural situation, one responsible for no inconsiderable share of our agrarian distress, is that so much poor land has been brought into use.

<sup>10</sup> See *Arable Land in the United States*, by O. E. Baker and H. M. Strong, separate from the Yearbook of the Department of Agriculture, 1918, No. 771.



*C. One of the Remedies for Bad Agrarian Conditions is to Get Poor Land Out of Use.—The Futility of Price-Regulation*

One of the chief remedies for the unfortunate situation of the farmer, and particularly of the settlers who are trying to get a foothold, is to put poor land, that is, submarginal land, out of use.

Farm organizations have frequently sought to find a remedy in price regulation and in price maintenance, either by public authority or by combination. The truth is, however, that price regulation cannot make prosperous those who are attempting to utilize submarginal land, although, if it could be carried out, it might lead to the impoverishment of the great mass of consumers, especially the wage-earners. If wheat were \$5 a bushel, some wheat would still be produced at a loss, whereas by putting poor land out of use and by doing everything possible to get the supermarginal man on supermarginal land, and at least the marginal man on marginal land, abundance can be produced at low cost.

*D. Taxation brings into Use Privately Owned Submarginal Land and brings Land into Use Prematurely*

Private ownership of submarginal land with our American system of taxation, which makes the private owner pay taxes on land before it is ready for use as well as on land that may never be fit for private use, is one chief cause of this evil. Probably somewhat less than half the land of the United States is fit for agricultural use, and yet a great part of this unfit land is privately owned. The private owner seeks to get something in return for the land and to shift upon somebody else the burden of carrying it, including its taxation. Even if he has average honesty, the temptation to sell unfit land is a very great one, especially as the burden of taxation becomes heavy.

1. Agricultural Land

In the State of Wisconsin we are attempting, through the Director of Immigration and otherwise, to prevent the sale of submarginal land to the settlers. One owner of such land, however, said not long ago to our Director of Immigration, "You keep me from selling my land because you say it is worthless, and yet the state makes me pay taxes on it."

2. Urban Land

Professor Alfred Marshall is, so far as I know, the only economist who has suggested<sup>11</sup> certain evils resulting from our taxation of land according to selling value, or as he terms it, capital

<sup>11</sup> Suggested, not elaborated.

value, instead of taxing it a percentage of its rental value, as is general in Europe.

"Land near to a growing town, which is still used for agriculture, may yield very little net rent; and yet be a valuable property. For its future ground rents are anticipated in its capital value; and further its ownership is likely to yield an income of satisfaction outside of the money rent received for it. In this case, it is apt to be underassessed even when rated at its full rental value; and the question arises whether it should not be assessed at a percentage on its capital value instead of at a percentage on its rent.

"Such a plan would hasten on building and thus tend to glut the market for buildings. Therefore, rents would tend to fall, and builders would be unable to take building leases on high ground rents. The change would, therefore, transfer to the people at large some part of 'the public value' of land which now goes to owners of land, that is built upon or is likely to be built upon. But unless accompanied by energetic action on the part of urban authorities in planning out the lines on which towns should grow, it would result in hasty and inappropriate building; a mistake for which coming generations would pay a high price in the loss of beauty and perhaps of health."<sup>12</sup>

Our land policies, including the taxation of land, should be framed with reference to keeping poor land out of use on the one hand, and on the other—and that is saying the same thing—so as to avoid bringing land prematurely into use. I visited Vancouver in British Columbia in 1914 and found there an illustration of the evil of bringing land prematurely into use. My observations there entirely confirm the results previously reached by Professor Bullock. Buildings had been exempted from taxation and the tax laid upon the land. The result was idle buildings as well as crowding; rear lots were in some cases used as sites of buildings instead of being kept for gardens. There were certainly an excessive amount of building, and that means waste of labor and capital.<sup>13</sup>

We can see this same evil in many parts of this country. When the tax on land becomes very heavy, that is, when it becomes excessively heavy, it forces land into premature use and destructive

<sup>12</sup> Marshall's *Economics*, Sec. 6, p. 799 and 1st paragraph on p. 800

<sup>13</sup> When I was in Christ Church, New Zealand, in 1914, I was entertained by a gentleman who had a pleasant home surrounded by a beautiful yard and garden, making that section of Christ Church more attractive than it would have been otherwise. "I could not own this place," he observed to me, "if improvements were exempt from taxation and all the tax placed on the land."

exploitation on the one hand, and on the other it leads to the abandonment of land and the forcing of land back into public ownership, an outcome for which no preparation has been made. Canadian cities which have exempted buildings from taxation afford abundant illustration of this, as has been shown by Professor Robert M. Haig, of Columbia, and also, very clearly, by Professor A. B. Clark in his paper on "Recent Tax Developments in Western Canada," printed in Vol. 13 of the Proceedings of this association.

### 3. Forest Land

Taxation of land based on capital or selling values may force into premature and wasteful utilization forests and mines. We have not time to enter into this especially complex phase of our subject, and I must content myself with citing an excellent account of what is happening in Michigan, furnished me by P. S. Lovejoy, formerly assistant professor of forestry in the University of Michigan. I quote from Professor Lovejoy.

"In the development of the northern counties of Michigan, where pine timber predominated, the first phase was one of enormous exploitation: lumbering on greater and greater scale and with little or no regard for the land which had produced the timber. Timber was considered to be inexhaustible: the land worthless. Taxes were hardly more than nominal but the prevailing practice was for the owner to abandon his lands to the state immediately he had cut them over. By 1890, millions of acres had thus reverted for non-payment of taxes.

"Between 1890 and 1915 came a phase with the accent all on agricultural development, and no little of it ill-advised, if not involving outright fraud. Traffic in land titles reached its height about 1900, with the state paying out great sums for the advertising of tax-delinquent parcels. Land taxes and prices tended to rise rather steadily during the period, but the prices kept ahead of the taxes so that fewer large owners saw fit to abandon their cut-over lands, preferring to hold on in the chance that a market for them might somehow be found. The aggregate of the cut-over and non-productive lands now reaches about ten million acres—a third of the land area of the state.

"It will be found, I think, that about 1915 we passed into a new phase. The 1920 census shows that Michigan lost 10,300 farms in ten years, most of the change representing abandonment rather than consolidation. This marks the wind-up of the indiscriminate land-boom period, I think. Illusions are now well dispelled, discouragement grows fast, general economic depression, with low prices for farm products and greatly increased taxation—all tend to identify the submar-

ginal farm lands. What will now happen in the cut-over areas?

"In limited areas, with really good agricultural prospects, present conditions may stimulate new and proper settlement; men hunting a home and a living and a chance at increasing land values without much regard to current wages—all that.

"But on the average it is to be expected that we shall shortly see a very rapid increase in the abandonment of the low-grade lands, especially among the larger holders, some 30 of whom own about a sixth of the state, as is typical of our forest and ex-forest districts. It is reported, for instance, that one company who owns some million and a quarter acres, recently 'dropped' a block of 18,000 acres as too hopeless to warrant even nominal taxes. It will not be surprising if the near future sees the big holders letting go of their poorer lands at the rate of 200 or 500 thousand acres a year. Taxes rise, interest compounds; land too poor for farming cannot carry the burden. So the owners must find a new market for their non-agricultural and now non-productive lands, or must let them go for taxes. The only new market seemingly possible is for forestry purposes. But with existing arrangements as to fire protection and with the property tax applied to growing timber, the private owners cannot well engage in forestry. The state is already surfeited with non-productive forest lands, now holding some 600,000 acres and the total increasing steadily by some 2,000 to 5,000 acres a month.

"As these tax reverted lands go through bankruptcy proceedings and title is taken by the state, the lands find their way into the jurisdiction of the Conservation Commission, which assembles them into state forest units. ('Forests' by courtesy only, for the lands are almost utterly stripped and barren, by reason of repeated skinings and fire.) In time, thanks to fire protection and planting, these areas may again become real forests.

"But with a mere 25,000 acres or so now reverting annually into its administration, the Commission gets funds enough to supply but partial fire protection to its lands, to equip and administer but a part of its current holdings and enough money to plant back only an insignificant fraction of the lands urgently requiring planting. What will happen if the rate of reversions for taxes suddenly increases, as suggested? Could or would the state raise the millions of dollars a year which would be needed to reclaim and protect and administer such areas? If the state is unable to bear such a burden, would the nation assist in the interest of the public need of adequate timber supplies? If neither should happen, then what? The situation in Michigan is but typical of a dozen other states."

## V. OWNERSHIP OF LAND AND TAXATION

*A. Property in Land, Not Peculiar in Yielding Income;  
Capital also Yields Income*

Many are disturbed because property in land yields income. Our attention is frequently called to a corner lot in a city, from which the owner derives, we'll say, \$30,000 a year. Taxes and all improvements are paid by the owner of the building erected on the lot. The owner of the lot may live in idleness, and it is said that he makes no return to society for what he receives.

Is there anything peculiar in this, or anything which should lead to a special policy of taxation? Unless we are prepared to go over to Socialism and abandon private ownership of productive property, we must expect to find men receiving an income from property, and using this income sometimes wisely and sometimes ill. It is part of the price we pay for private property, and the world has settled down to a belief, still held by the vast majority, that private property is beneficial and that its benefits outweigh its evils.

No one should be perturbed by the spectacle of a lot yielding an income to an idler, its owner, unless he is at the same time perturbed by the spectacle of capital yielding an income without any effort on the part of its recipient, the owner, likewise an idler. The same man who is disturbed by the fact that the owner of a corner lot receives \$30,000 a year ground rent, sees nothing alarming in the fact that trust companies (which he may perchance pass daily) manage large sums of capital for their owners and hand over to them yearly incomes in many cases far exceeding \$30,000 a year—and that without any care or concern on the part of the recipients, who may be worthy or who may be gilded youths leading dissolute lives. We cannot take the good—and that is vast—from private property without some evil, which, however, we must attempt to diminish by making ourselves worthy first of all and then by doing what in us lies to help other men to be worthy. This is not only the price we pay for private property, but the price we pay for liberty. If you bring it about that men cannot do evil, you must bring it about that they cannot do good. But I will not dwell upon this moral platitude.

*B. Owners of Land that is Not in Active Use Perform Services*

1. They Hold the Land while it is Ripening into Use. This is Part of the Productive Process—the Production of Time and Place Values.—The Theory of Ripening Costs in Land Utilization

Now what are the services rendered by the owner of land awaiting use? Take, for example, the vacant land which I can see

from my home on University Heights, Madison, Wisconsin. I cannot conceive of any desirable arrangement whereby all the land in such a subdivision as University Heights, a subdivision urgently needed at the time the land was platted, should be at once entirely occupied by buildings. To have covered University Heights—and I use this as a mere illustration—with buildings at the time it was platted would have involved an enormous waste. The buildings would not have been suitable, and it would not have been possible to secure desirable groupings for the people living in this subdivision. Building is going on with a fair rate of speed, perhaps as rapidly as possible without loss. This land is in the process of ripening into use, and this ripening process is a part of the productive process of home-making. We may take marketing as an illustration. The productive process in the case of farm products is not complete until they reach the consumer. The cost of marketing is a part of the cost of production and somebody has to bear it, whether it be the middleman or whether it be the farmer or the consumer, avoiding the middleman. Just so the ripening process is a part of the productive process in land utilization. The product has time and place value. We have place use giving place value when a new and called-for subdivision of a city furnishes locations for new homes. We also have the creation of place value when wild land is bought and, through successful subdivision, is made into farms for settlers. We have also a process of ripening from a lower to a higher use, and in my own home I can see many illustrations of this ripening process. One of my neighbors has in connection with his home three lots used for lawn, garden, and playground. I am not able to see that at the present time this land could be put to any better use. It makes the part of the city where he lives more attractive, it adds to food production, and it affords recreation for a number of children. But this land is undoubtedly ripening into a higher use, and the probability is that within a period of ten to fifteen years some of it will become the site of new homes.

Anyone who opens his eyes can see thousands of illustrations of this ripening process which is socially beneficial production. In Chicago one can see land held by the University of Chicago, yielding now a small return, but ripening into a higher use. It would be in the end a waste to put upon this land inferior buildings which would have to be torn down. Strangely enough economists have overlooked this ripening process as a necessary part of production costs of land—to give it a name let us call it *the theory of ripening costs in land utilization*.

## 2. They Maintain a Reserve of Land for Food Production in Times of Need

The unoccupied land, that is to say, vacant lots in cities, gives us a reserve, and during the World War good use of this reserve was made in our war gardens. It has been said that they "saved the situation". This may be an exaggeration, but it is certain that they helped the situation, and if the war had continued longer, it is quite possible that they would have saved the situation.

The food production within the limits of cities is great. There is many a city with vacant lots where, in all probability, the value of the food production is as great as it would be if the land were in farms. Let me again refer to University Heights, where I live. (I take personal illustrations reluctantly, but from the absence of adequate researches it seems the best that can be done.) It is probably within bounds to say that never in history, in the time when University Heights was a farm, did the agricultural production have a quarter of the value that it has at the present time. This is an under-statement. It is probable that if all the houses were removed and the hundred-odd acres were made into a farm, the annual value as a farm would not be one-fifth the value of present food production. The value of food production on my own little place of less than an acre must be at least one-quarter of the agricultural rental value of all the land in the subdivision, according to an estimate given to me by one of my neighbors who has been a successful farmer, and who is a very capable judge of farm rent values. But if this is perhaps based on an under-estimate of the rental value of the entire subdivision, it is quite safe to place the value of the food production on my little piece of ground at more than one-tenth of the highest possible agricultural rental value of the subdivision.

The agricultural land supply was not increased by platting, it is true. On the contrary, it must be conceded that it was diminished; but the supply of labor and capital was increased, far more than offsetting the diminished land supply in this case; for it must be borne in mind that the labor expended by the owners of the gardens is a free gift. Past labor has been accumulated in the form of capital as saving has been stimulated; while present labor utilizes time that would otherwise go to waste, and this is something especially significant in periods of distress like the years of our World War, when many girls, boys, and old men, and men with spare time and strength turned to food production, and that to their own great physical and moral health. Another illustration is afforded by neighbors who now find abundant exercise in gardens and who enjoy it and would otherwise have to seek exercise elsewhere and to do so at a considerable expense.

### 3. They take the Risks of Ownership, Pay Taxes and Special Assessments, etc.

Our American system of taxation on selling value makes the owner carry the load of the vacant lot at his own risk. He has not only to pay taxes, but to bear special assessments and the interest on the value of the property. Special assessments even anticipate increments in value. Did we not have the public revenues yielded by vacant land privately owned while undergoing the ripening process, the tax rate would have to be raised. The owner renders distinct service because he carries the burden while a lower use is ripening into a higher use. As above seen we have to do here with a real social cost that some one has to bear. If the city itself undertakes platting, the social costs still persist. It is reasonable to ask, "Can we lessen these costs by better methods?" as it is reasonable to seek to lessen marketing costs. But eliminated these costs cannot be. Many an owner of vacant lots is, almost literally, lying awake at night to devise some system of bringing the present use of his vacant lot into a higher use. Most of the building that is carried on in all of the cities with which I am familiar has this purpose. It is private property in land which is responsible for the greater part of the building, probably three-fourths of the building, in Madison, Wisconsin—until recently one might have said with safety nine-tenths.

I am not saying that the laying out of additions to cities is carried on without waste, although I believe the loss in food production is negligible, if it exists at all. There are evils in neglected and unsightly vacant spaces; there is great waste due to lack of planning and harmonious development. The heart of the land problem in the city is to be reached largely by wise city planning and the development of the police power so that it may be exercised to secure æsthetic results as well as other proper purposes; but the solution of urban land problems is not at all to be sought in confiscation of land values. This is not the place to enter into the tasks of city planning, but a suggestion or two may be made to show that it is land planning rather than land taxation that affords the chief measures of relief.

That excessive, and otherwise ill-advised platting exists, is beyond all question, and it entails loss of many kinds of which the least is in food production, if this exists at all. Ill-founded hopes of increases in values lead to unwise investments, often on the part of poor people; and from time to time we have illusion, craze and wild speculation. Then there is waste in laying out streets, in providing the public utilities and other facilities for a scattered population. We have to do with natural resources and especially human resources. A social control of platting is beginning and should be rapidly extended; and include new rural land settle-



ments so as to bring about closer settlement, with elimination of submarginal land through public ownership. When, as in Superior, Wisconsin, we have gross overplating, land being laid out for a city of a million inhabitants while the population is scarcely a twentieth of that, the only thing seems to be to struggle along as well as possible with the situation, encouraging the best present utilization of land and seeking greater population. To tear up public utilities, to break up streets, to return a large part of the land to farms, would be a still more wasteful process.

But fallible man will never avoid all mistakes, and therefore can never eliminate all waste. Who can read the future? Can a city council? A state government?

#### VI. LAND RENT AND TAXATION

##### *A. John Stuart Mill's Plan to Secure Increments in Land Values for the State. Would this have Bankrupted the British Treasury?*

It has been assumed by the old writers that land rents increase very rapidly as population and wealth increase and as civilization develops. John Stuart Mill felt positive of this large increase in rental value and so did his contemporaries. He was confident that the state could reap great gains for the community by taking the future increments of value and by buying up the land of those who objected to parting with the future increments of land value, thus making the state in such cases bear the loss of any future decrements in land values. He did not even propose to take all the future increments, but wished to leave the landowners a small share as an aid in collecting taxes. John Stuart Mill was an honest man, called the Saint of Radicalism, and was unwilling to break faith with landowners who bought land in good faith under the existing system of landed property. In general, he resolved all doubts in favor of the landowners and still thought that his proposed measures would bring large gains into the public treasury. A problem for investigation, upon which I hope to have a report in a not distant future, is: What would have happened if at the height of John Stuart Mill's agitation for appropriation of future increments, the policy he advocated had been carried out in England? I do not like to assume the rôle of a prophet, but I do venture to express my belief that if this policy had been applied to all the agricultural land in England, the British Treasury, long before 1921, would have had a staggering, if not intolerable, burden to bear.

considerably. This lack of correlation between rent and governmental expenditures is not fully brought out in Table IV and Chart IV. Prior to 1910 only the decennial change was recorded, yearly fluctuations thus being obliterated.

#### G. The Increasing Tax Burden on Land

Table V and Chart V show that the tax rate on property subject to ad valorem taxation (the major portion of which property consists of land) has increased 39 per cent from 1912 to 1920. But this rate is based on assessed value and not true value. This distinction is important, because in a period of rapidly rising governmental expenditures, taxing officials "better" the assessment, that is, increase the ratio of assessed to true value. They do this in preference to raising the tax rate or because the legal limit to the tax rate has been reached and this is their only recourse. In Wisconsin, where the Tax Commission endeavors to maintain true value assessments, the increase in the state assessment from 1912 to 1920 was only 61 per cent, compared with 131 per cent as shown in Table V. In other words, the increase in the tax rate on true value has probably been almost 50 per cent greater than the increase in the tax rate on assessed value.

TABLE I  
COMPARISON OF INCREASE IN LAND VALUE WITH INCREASE IN TOTAL  
WEALTH OF THE UNITED STATES, 1850-1920 \*

Year	Total wealth	Land	Percentage of total wealth in land	Percentage of ten years increase in total wealth due to rising land values
1850	\$7,135,780,000	\$4,265,000,000	59.8	....
1860	16,159,616,000	8,030,000,000	49.7	41.7
1870	30,068,518,000	11,580,000,000	38.5	25.5
1880	43,642,000,000	16,600,000,000	36.8	33.0
1890	65,037,091,000	22,845,000,000	35.1	31.7
1900	88,517,307,000	34,900,000,000	39.4	51.3
1910	165,000,000,000†	66,848,000,000	40.5	41.8
1920	302,000,000,000‡	113,642,000,000§	37.6	34.2

\* Taken from King's *Wealth and Income of the People of the United States*, with exceptions noted below.

† Census figures are for 1904 and 1912, so this figure is interpolated.

‡ Estimated from Friday's *Profits, Wages and Prices*, and from data described in note below.

§ Based on an investigation of assessments in 24 states, which showed an increase in *assessed value* of 55 per cent from 1912 to 1919, and also upon consideration of the increase in the *true value* of real estate in Wisconsin, which amounted to 69 per cent from 1910 to 1920.

land values has not been so large in recent decades as in earlier years.

*Share of Rent in the National Income has Remained Stationary*

Table II and Chart II are reproduced from King's *Wealth and Income of the People of the United States*. They show that the proportionate share of rent in the total national income has remained practically stationary from 1850 to 1910. Merely as an indication of what has happened since 1910, Table III and Chart III are presented. The chief point to be observed is that house rents (which, it is true, are not purely land rents) did not rise so rapidly as wholesale prices or hourly wages. This would seem to indicate that in a period of rapidly rising prices, rents of any kind are relatively slow to increase, due in part to custom and long-time contracts, and in part to other causes, already mentioned. It is also true that in a period of rapidly falling prices, rents are relatively slow to decrease. It should be observed, however, that the increase since 1913 in the wholesale prices of building materials is still greater than that of house rents. We are probably safe in assuming that land rents comprise a relatively smaller share of the national income in 1920 than in 1910.

*Land Rents are Increasing More Slowly than Public Expenditures and would be Inadequate as the Sole Source of Revenue*

Another fact that ought to be taken into account in all problems of taxation, especially in projects involving an exclusive reliance upon land taxation, is that land rents are increasing at a far slower rate than public expenditures. Table IV and Chart IV are a comparison of the cost of government (local, state and national) and the rent of land. They show that since 1900 land rents were either insufficient or barely sufficient to cover the cost of government. Since the beginning of the war period in 1917 the cost of government has far exceeded the rent of land. While it is true that the war has abnormally increased governmental expenditures, it is also true that the total governmental expenditures in 1920 on a pre-war basis would still have been \$5,845,000,000 or \$805,000,000 in excess of the rent of land.<sup>17</sup>

*Land Rents are Inelastic, Not Increasing and Decreasing with Public Needs*

Tables III and IV, and Charts III and IV, already referred to, indicate the inflexibility of land rents. While this quality is an advantage in stabilizing governmental revenues, it is also a serious defect when we consider that governmental needs fluctuate

<sup>17</sup> This estimate is based on data compiled by Dr. Edward B. Rosa, which shows that \$3,781,980,715 represents the excess of federal expenditures in 1920 over estimated normal expenditures for that year.

considerably. This lack of correlation between rent and governmental expenditures is not fully brought out in Table IV and Chart IV. Prior to 1910 only the decennial change was recorded, yearly fluctuations thus being obliterated.

#### G. The Increasing Tax Burden on Land

Table V and Chart V show that the tax rate on property subject to ad valorem taxation (the major portion of which property consists of land) has increased 39 per cent from 1912 to 1920. But this rate is based on assessed value and not true value. This distinction is important, because in a period of rapidly rising governmental expenditures, taxing officials "better" the assessment, that is, increase the ratio of assessed to true value. They do this in preference to raising the tax rate or because the legal limit to the tax rate has been reached and this is their only recourse. In Wisconsin, where the Tax Commission endeavors to maintain true value assessments, the increase in the state assessment from 1912 to 1920 was only 61 per cent, compared with 131 per cent as shown in Table V. In other words, the increase in the tax rate on true value has probably been almost 50 per cent greater than the increase in the tax rate on assessed value.

TABLE I  
COMPARISON OF INCREASE IN LAND VALUE WITH INCREASE IN TOTAL  
WEALTH OF THE UNITED STATES, 1850-1920 \*

Year	Total wealth	Land	Percentage of total wealth in land	Percentage of ten years increase in total wealth due to rising land values
1850	\$7,135,780,000	\$4,265,000,000	59.8	....
1860	16,159,616,000	8,030,000,000	49.7	41.7
1870	30,068,518,000	11,580,000,000	38.5	25.5
1880	43,642,000,000	16,600,000,000	36.8	33.0
1890	65,037,091,000	22,845,000,000	35.1	31.7
1900	88,517,307,000	34,900,000,000	39.4	51.3
1910	165,000,000,000†	66,848,000,000	40.5	41.8
1920	302,000,000,000‡	113,642,000,000§	37.6	34.2

\* Taken from King's *Wealth and Income of the People of the United States*, with exceptions noted below.

† Census figures are for 1904 and 1912, so this figure is interpolated.

‡ Estimated from Friday's *Profits, Wages and Prices*, and from data described in note below.

§ Based on an investigation of assessments in 24 states, which showed an increase in *assessed value* of 55 per cent from 1912 to 1919, and also upon consideration of the increase in the *true value* of real estate in Wisconsin, which amounted to 69 per cent from 1910 to 1920.

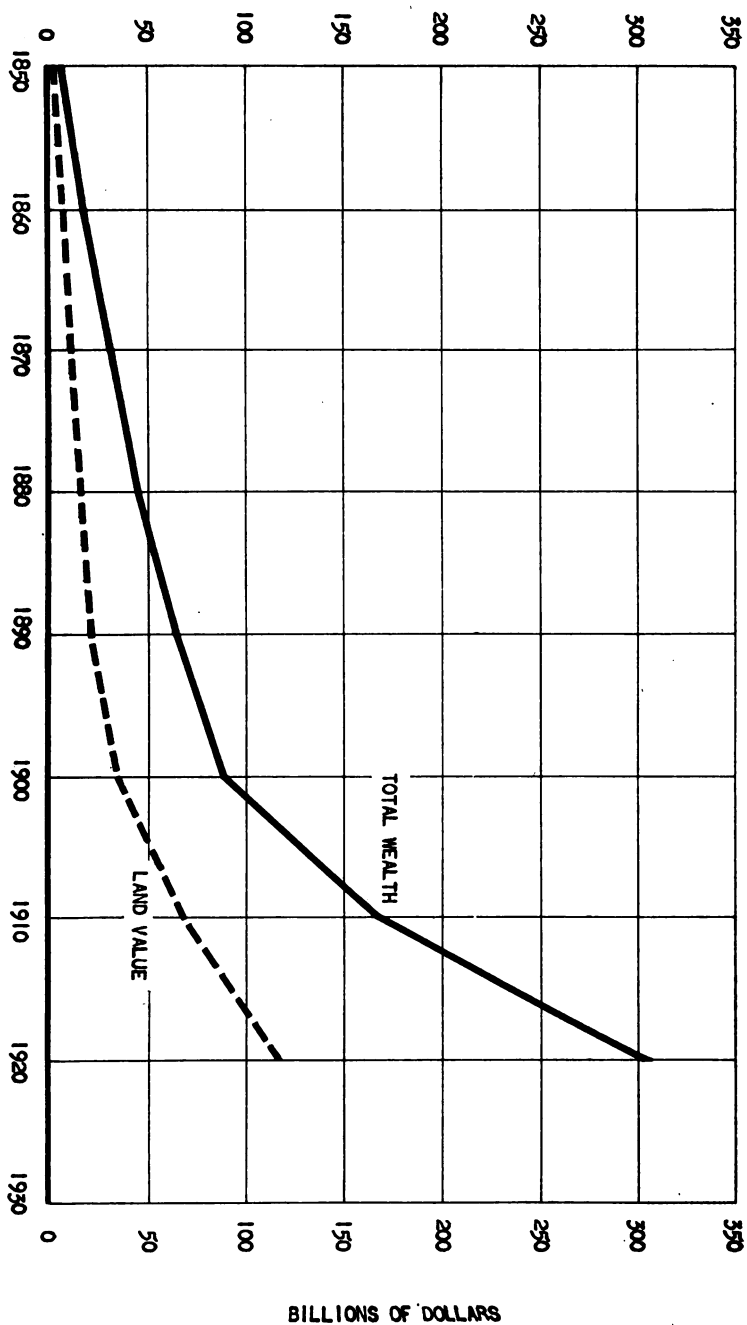
CHART I.  
COMPARISON OF INCREASING LAND VALUE AND TOTAL WEALTH OF UNITED STATES

TABLE II

THE ESTIMATED PERCENTAGES OF THE TOTAL NATIONAL INCOME RECEIVED  
RESPECTIVELY BY LABOR, CAPITAL, LAND AND THE ENTREPRENEUR \*

Census Year	Shares of product				
	Wages and salaries	Interest	Rent	Profits	Total
1850.....	35.8	12.5	7.7	44.0	100.0
1860.....	37.2	14.7	8.8	39.3	100.0
1870.....	48.6	12.9	6.9	31.6	100.0
1880.....	51.5	18.6	8.7	21.3	100.1
1890.....	53.5	14.4	7.6	24.6	100.1
1900.....	47.3	15.0	7.8	30.0	100.1
1910.....	46.9	16.8	8.8	27.5	100.0

\* From King's *Wealth and Income of the People of the United States*, page 160.

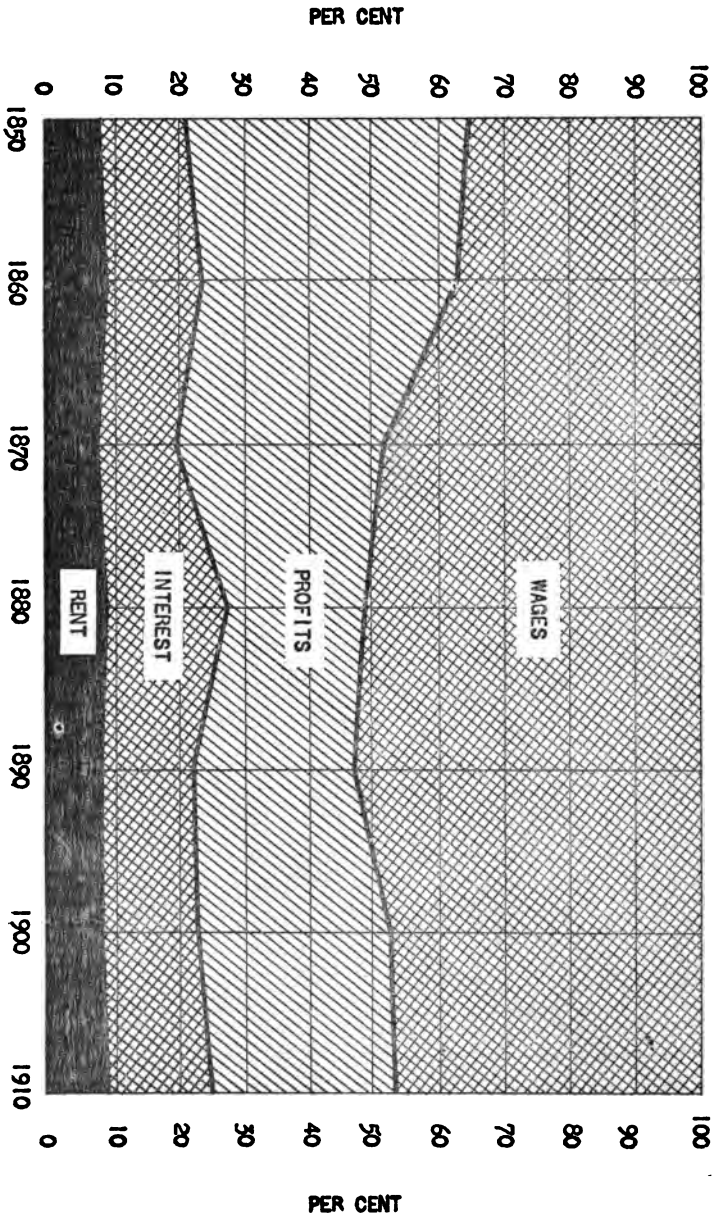


CHART II.  
THE ESTIMATED PERCENTAGE OF THE TOTAL NATIONAL INCOME  
RECEIVED RESPECTIVELY BY LABOR, CAPITAL, LAND AND THE ENTREPRENEUR

TABLE III

WHOLESALE PRICES OF ALL COMMODITIES AND OF BUILDING MATERIALS;  
HOURLY WAGES; AND HOUSE RENTS. 1913 = 100

Year	Index number			
	Wholesale prices All commodities	Wholesale prices Building materials	Hourly wages	House rents
1913				
January .....	100	100		
April. ....	98	101		
July .....	100	101	100	100.0
October. ....	101	98		
1914				
January .....	100	98		
April. ....	98	99		
July. ....	100	97	102	
October .....	99	96		
December. ....	....	....	....	100.0
1915				
January. ....	99	94		
April. ....	100	94		
July. ....	101	93	103	
October. ....	101	93		
December ....	....	....	....	101.5
1916				
January. ....	110	99		
April. ....	117	101	111	
July. ....	119	99	111	
October .....	134	101		
December. ....	....	....	....	102.3
1917				
January .....	151	106		
April .....	172	114		
July. ....	186	132	128	
October .....	181	134		
.....	.....	....	....	100.1
1918				
January. ....	185	136		
February. ....	186	138		
March. ....	187	144		
April. ....	190	146		
May. ....	190	148		
June .....	193	150		
July .....	198	154	162	
August. ....	202	157		
September. ....	207	159		
October ....	204	158		
November ....	206	164		
December ....	206	164	....	109.2



TABLE III—*Concluded*

1919					
January .....	203	161			
February.....	197	163			
March.....	201	165	184		
April.....	203	162			
May.....	207	164			
June.....	207	175	....	114.1	
July.....	218	186			
August.....	226	208			
September.....	220	227			
October.....	223	231			
November.....	230	236			
December ....	238	253	....	125.3	
1920					
January .....	248	268			
February.....	249	300			
March.....	253	325			
April.....	265	341			
May.....	272	341			
June.....	269	337	....	134.9	
July.....	262	333	234		
August.....	250	328			
September.....	242	318			
October.....	225	313			
November.....	207	274			
December.....	189	266	....	151.1	
1921					
January .....	177	239			
February.....	167	221			
March.....	162	208			
April.....	154	203			
May.....	151	202			
June.....	148	202	....	159.0	

CHART III.

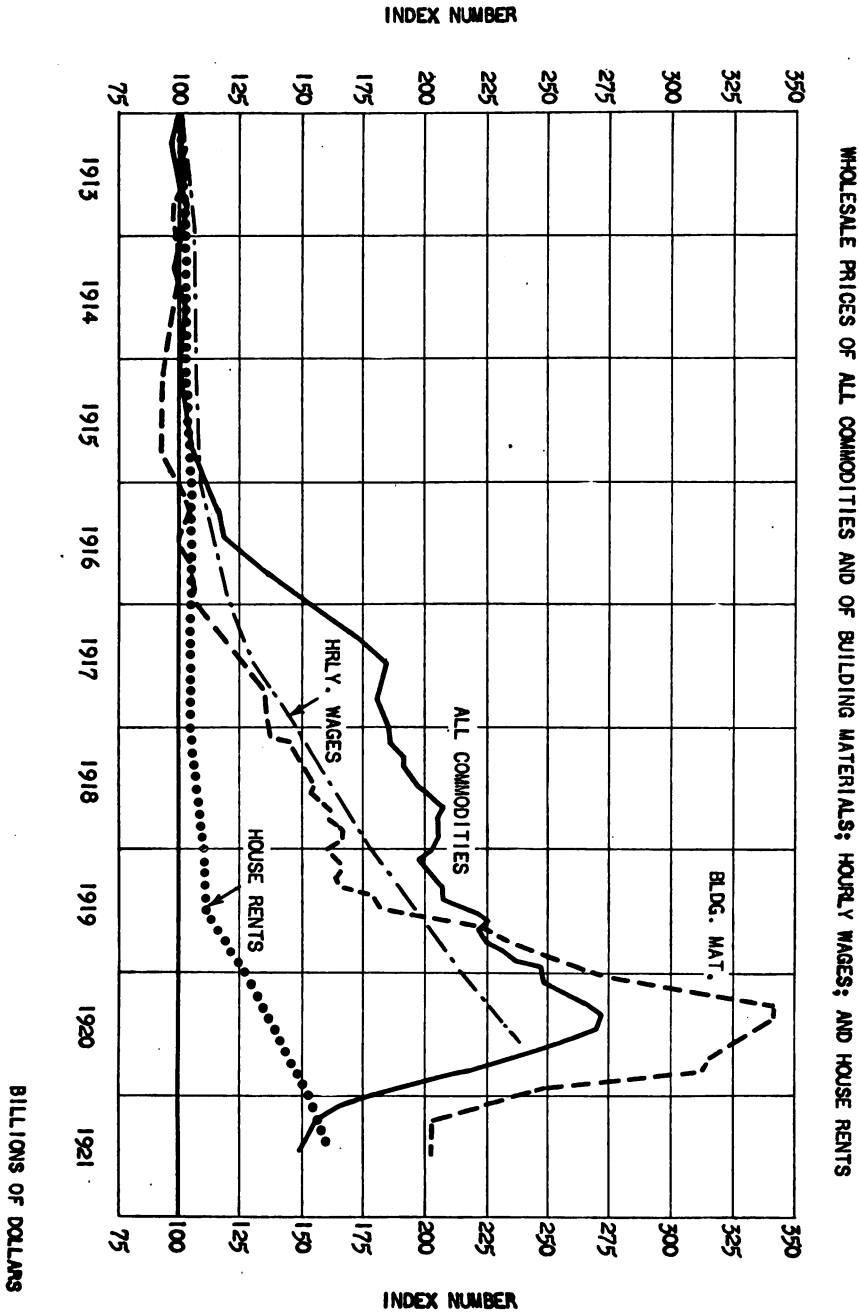


TABLE IV

COMPARISON OF THE COST OF GOVERNMENT AND THE RENT OF LAND IN THE UNITED STATES, 1850-1920

Year	Cost of government*		Rent of land†	
	Amount	Percentage of increase	Amount	Percentage of increase
1850 .....	\$100,300,000	.....	\$170,600,000	
1860 .....	161,700,000	61.2	321,200,000	88.2
1870 .....	436,600,000	335.2	463,200,000	171.5
1880 .....	458,300,000	356.8	642,300,000	276.5
1890 .....	784,900,000	682.5	913,800,000	435.6
1900 .....	1,469,000,000	1,364.5	1,396,000,000	718.1
1910 .....	2,591,800,000	2,483.8	2,673,900,000	1,467.0
1911 .....	3,054,900,000	2,945.5		
1912 .....	3,171,600,000	3,062.0		
1913† .....	3,284,343,266	3,174.0		
1914 .....	3,453,600,000	3,243.0		
1915 .....	3,714,100,000	3,603.0		
1916 .....	3,763,500,000	3,625.0		
1917 .....	4,338,300,000	4,225.0		
1918 .....	12,337,300,000	12,240.0		
1919 .....	19,025,900,000	18,865.0		
1920 .....	9,627,200,000	9,498.0	5,040,000,000	2,854.0

\* Local, state and national, exclusive of loans, investments and payment of indebtedness. The figures from 1850 to 1910 are taken from King's *Wealth and Income of the People of the United States*. The estimates for succeeding years are based on United States Treasury Reports and reports of the Bureau of the Census. No pretense of absolute accuracy is made, since the data for some of the civil divisions were not available for each year.

† Based on a 4 per cent return on estimated land value shown in Table I. This is the rate used by Dr. King.

‡ From an address of the Chief Statistician of the Bureau of the Census, before the National Tax Association, San Francisco, August 12, 1915.

CHART IV.  
COMPARISON OF THE COST OF GOVERNMENT AND THE RENT OF LAND IN THE UNITED STATES

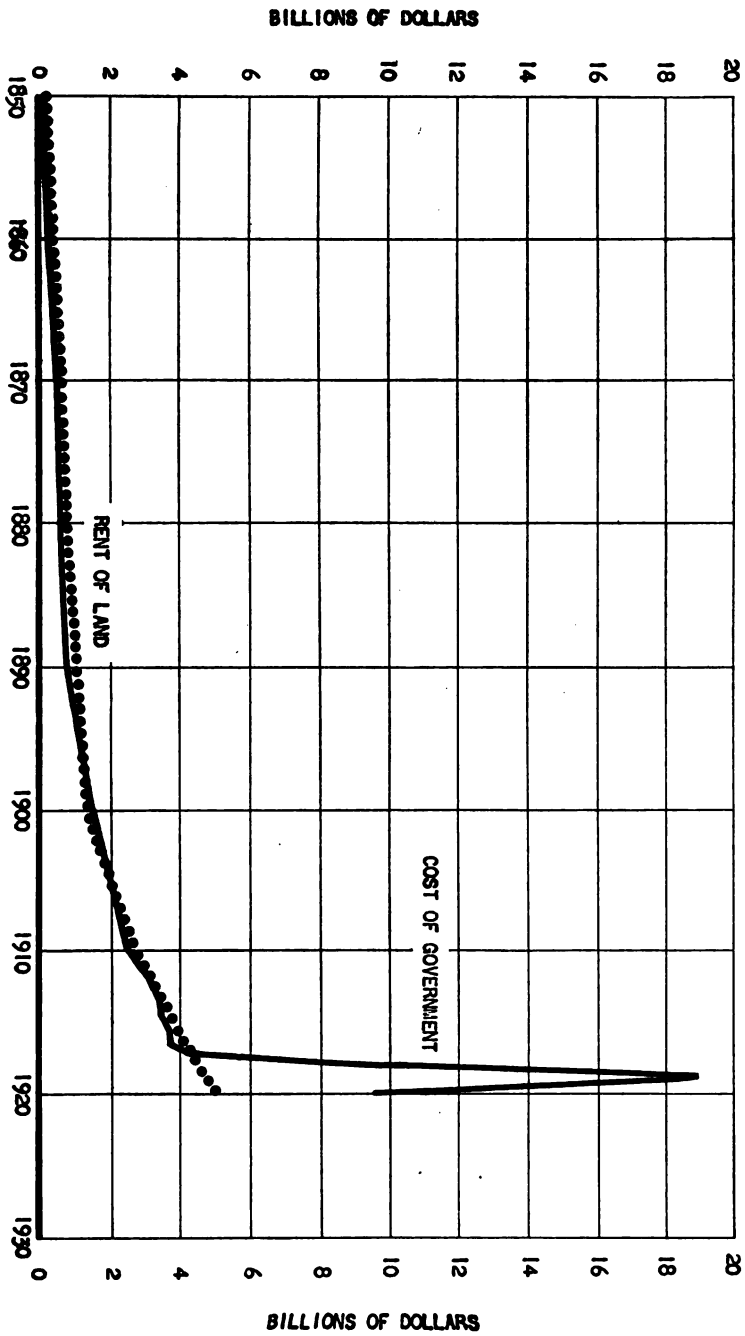


TABLE V

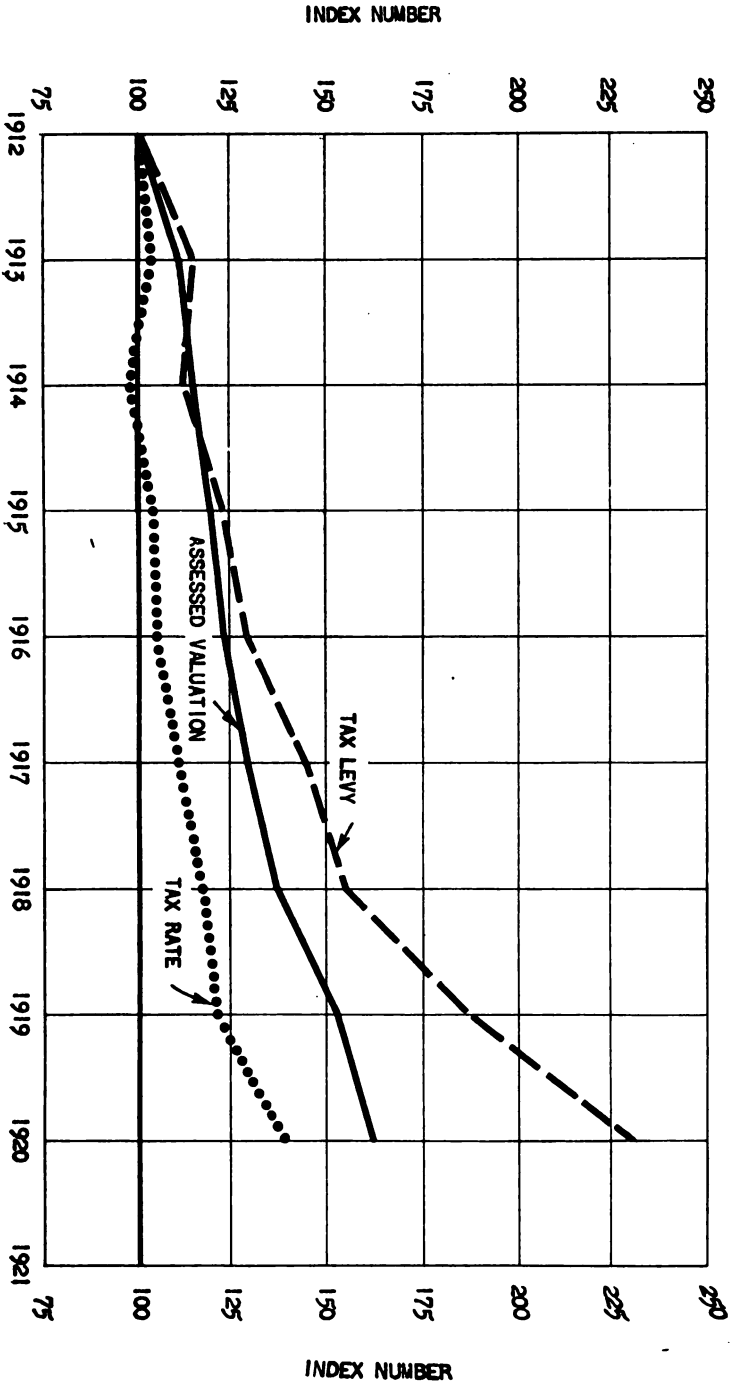
INCREASE IN ASSESSED VALUATION OF ALL PROPERTY SUBJECT TO ADVALOREM  
TAXATION, IN AMOUNT OF ADVALOREM TAXES, AND IN RESULTANT  
TAX RATE \*

21 states 1912-19; 7 states 1920

Year	Index number 1913—100		
	Assessed Valuation	Tax levy	Tax rate
1912 .....	100	100	100
1913 .....	110	116	105
1914 .....	115	113	98
1915 .....	118	123	104
1916 .....	123	130	106
1917 .....	130	144	111
1918 .....	137	156	114
1919 .....	154	186	121
1920 .....	166	231	139

\* For 1920 statistics of only seven states were available. However, these were widely scattered and representative. As soon as data for more states are obtainable, this table will be revised and include only states for which continuous data since 1912 are available.

CHART V.  
INCREASE IN ASSESSED VALUATION, TAX LEVY AND TAX RATE ON PROPERTY SUBJECT TO AD VALOREM TAXATION  
21 STATES 1912-1919; 7 STATES 1920



## VII. RECOMMENDATIONS

On the basis of what has been said I think it possible to offer certain recommendations for examination and discussion.

*A. Land Taxes should be Used Chiefly for Local Revenues*

My first recommendation is that the land should be used chiefly as a source of local revenue. Land is of such a nature that it can be best handled in comparatively small units, and moreover land is most affected by local conditions. Landowners are those who are chiefly responsible for local improvements. It would be difficult to find any American city where landowners are not the leaders in public improvements that add to the value of the land. They spend time, thought, and money to advance the interests of their communities, and land-ownership is made a basis of appeal for funds for parks, for pleasure drives, for churches, for purposes of all sorts, which, it is urged, will develop the communities where the land is located.

Moreover, the local units, especially our American cities, have great and constantly increasing needs of public revenue. I think, then, that in every way we could get best results if we set aside land as in the main a source of local revenues. There are many technical reasons for this into which I need not enter before the National Tax Association. At the same time, I am in entire harmony with the Report on a Model System of State and Local Taxation with respect to segregation of tax revenues. I think we should have in every state a central taxing authority, that is, a modern tax commission, and I believe that the Committee on the Model System is correct in recommending that there should be some state control and probably some state taxation of the land. May I quote from the report of this Committee on a Model System, as it expresses my own views?

"The committee is of the opinion that a partial separation of the sources of state and local revenue is desirable, but that complete separation, by cutting the connecting cord between the state and local governments, tends to destroy the state's sense of responsibility in the matter of local taxation. There is no experience to justify the belief that, if the states turn over to the local governments independent sources of revenue, and adopt the theory that local taxation is an affair of purely local interest, we shall ever have a satisfactory administration of the tax laws by local officials. Experience abundantly shows that such officials need constantly the expert advice, intelligent guidance, and, when necessary, the effective control of a state tax commission, composed of experts and keenly alive to the need of just and efficient administration of tax laws by local officials."

*B. Land Taxation should be Real Estate Taxation, with Temporary Exemptions (Short Terms) for Buildings when Encouragement of Building is Peculiarly Needed*

Second, land taxation should be real estate taxation. While admitting that some of my fellow economists may go too far in trying to establish an identity of land and capital, I at the same time hold that practical experience shows that what we need in taxation is the legal concept *real estate*. When a man puts up a building, he considers not only the return on the land, but a return on the building, and he amalgamates the two. Very likely he sacrifices real estate value for the sake of land utilization. He calculates that the land may increase in value and offset a certain depreciation of the building. Putting the two together, he finds that he may hope for a modest return on his investment. The land furnishes the security without which the building would not be constructed. It gives borrowing power, and this is especially so if land values are stable, and still more so if there is a tendency to a moderate, slow increase in land values. This is, I take it, the reason why it is so very easy to borrow money in a city like Madison, Wisconsin, when one wants to construct a building and has the lot paid for; perhaps, also, one of the reasons why the city has not known a bank failure for something like half a century.

If there is special need for new buildings, that is to say, if that investment of labor and capital is more urgent than other investment of labor and capital—sometimes this is the case; sometimes not—it may be desirable to exempt new structures from taxation for a limited period, say three to five years; not ten as in New York State. This does not increase the final burden upon the land, inasmuch as the buildings very soon come upon the tax duplicate, as it is generally called.

Among the many reasons why we should not tax separately the value of the land and the value of improvements due to the application of labor and capital, is one that in itself should be decisive; namely, the difficulty of separating the two values. Improvements become in many cases so blended with the land itself that they are indistinguishable and inseparable. While this is particularly the case with respect to agricultural land, it is often impossible to make this separation even in the case of urban land, where we have to do with grading down elevations, filling in depressions, beautification of land surrounding homes, successful efforts of home owners to build up their cities and to add to the amenities of their own residential district, the joint expenditures of owners of business property to develop the economic advantages of their cities, and many other sorts of constructive work of landowners, too numerous to be mentioned.



The administrative and general economic difficulties involved in the separation of land values, "prairie values", as they are called in England, and the value of improvements led to the shipwreck of the English increment taxes established by the Lloyd George budget of 1909. It is acknowledged officially that the impossibility of making this separation caused the failure of the increment taxes and their abandonment by Chamberlain in the budget of 1920.

When I was in England in 1913 and engaged in the study of land problems, the chief effect of the increment taxes that I observed was a depression of land values, a general feeling of discouragement of the landed interests and strengthening of tenancy. I remember, well, talking with a prosperous tenant farmer in Scotland who could have bought the farm of some three hundred acres that he occupied. There appeared to be a special reason for the purchase, as otherwise there was danger that the land might be purchased for small holdings; and so I asked him, "Why don't you buy the three hundred acres? You then remove the danger of public purchase, which you say would bring loss to you, because your buildings and all your equipment have been adjusted to a three hundred acre farm." The reply was: "I would buy the three hundred acres if I had as much confidence in the government as I have in my landlord." That appeared to be a very general sentiment in England in 1913. The farmers were afraid to become owners of the land they tilled. They preferred to let the landlords carry the risks and all the heavy burdens involved in landownership. The situation does not appear to have improved since that time.

### *C. No Progressive Taxation for Land is Needed*

The third recommendation is that taxes should be in proportion to the selling value and not progressive. It is suggested that a rate of taxation of one and a half per cent on the selling value of the land ought to be the regular normal upper limit under normal economic conditions. There can be little doubt that this would be equivalent to an income tax of twenty-five per cent, if we compare total values in the United States and total rents. The objection that the tax has been anticipated in purchase price, or in other words, it has been capitalized, has already been discussed. It is capitalized just as it is in the case of Liberty bonds or in the case of other property where the tax is anticipated to the same degree.

I think in the case of land we ought to have in mind benefits from government primarily; and if we have this standard, there is no reason for a progressive rate. It has been urged that land occasions less expense on the part of government and receives

relatively less benefits than some other forms of wealth, and consequently that the rate of taxation on land should be regressive rather than progressive. We are unable, however, to accept this point of view, against which more can be said than in its support. American experience, also, would not clearly seem to indicate a departure from the rule of one uniform rate. If we depart from it at all, it should be in the direction of substituting, to a certain extent, rental value for selling value as a basis of taxation.

It is impossible to devise a progressive rate which will not do harm, and the reason for this is because the proper size of land holdings varies without any assignable limit. We have the concept *economic holding*, and this is used in two different senses. Sometimes it means a holding which is sufficient in size to support a farm family in accordance with the accepted standard of living for farm families. It is used in this sense in Ireland, and frequently it has that meaning in this country and elsewhere. In another sense, economic holding refers to that combination of land, labor, and capital which will produce maximum efficiency. In either sense the economic holding varies tremendously in accordance with the quality of land, and until we have classification of land based on quality we cannot establish a proper area for an individual holding. There are many parts of the country where 3,000 acres would be an inadequate size for a family farm, and a man with that amount of land could well speak of his farm as a small farm. In the case of ranch land the area should be sufficient to support a certain number of cattle, and that number should be sufficient for the proper support of a farm family. The rancher in Texas will very generally need several sections of land in order to carry on his ranching operations with efficiency, and in that state 5,000 acres would not be an improper size for a ranch, and very frequently a ranch of 10,000 acres would be required to give the best combination of the requisites of production. We cannot enter into all the technical factors involved, but enough has been said, surely, to show that we are not in a position to attempt regulation of land holdings, when we consider them from the point of view of the individual, by means of a progressive rate of taxation. There are certain kinds of land, however, where a lower rate of taxation than the ordinary standard rate is required, in order to secure continuity of production; and what we have here in mind is especially forest land.

We have, however, not only to consider the proper size of land holding from the individual point of view, but from the point of view of those engaged in merchandising land or in establishing land settlements. What is a large economic holding for a family is an impossibly small holding for companies engaged in the enterprises just mentioned. There is good reason in actual experience

for thinking that in one of our Lake states in the old Northwest a proper unit for land settlement is forty thousand acres. If the unit is smaller, the company undertaking land settlement is likely to find the overhead so great that it cannot do what is needed for the settlers. Now, there is no way that I know anything about—and I have given years of study to the subject—whereby we can dispense with private activity in land settlement. We have great numbers of men who have acquired a degree of skill in land settlement which is a social as well as an individual asset. We find, also, in many parts of the country—certainly in Wisconsin, and I feel equally certain not alone in Wisconsin—a rising standard of conduct on the part of land dealers, the best of whom are seeking to make the land business a real profession, animated by high ideals of integrity and service. We may have public land colonization, and we are all familiar with the admirable experimentation going on in California, under the direction of Professor Elwood Mead. Without any disparagement, but with high praise for his experiments, we have to say that after all, these are something really small and simply to be regarded as experimentation. One single project in Wisconsin is more than twice the size of all that California has so far undertaken to do.

If we turn to cities we find that any successful real estate company must have holdings which are extremely large from the standpoint of an individual landowner. A small company can do very little to increase home-ownership. Its overhead is too large, its resources too small. It was on this account that in Madison, Wisconsin, several companies consolidated into one larger company. The small companies could render very little service, for reasons just mentioned. When the consolidation took place some talked about land monopoly, but instead competition was stimulated very greatly, and the ability to do for those who want to own homes has increased immensely. Any young man with character and a fair position can buy a home or have one constructed for him for an extremely small first payment, and sometimes with almost no initial cash payments. I have known one case, indeed, in Madison where a property valued at \$35,000 was sold to a tenant on the installment plan, with absolutely no initial cash payment.<sup>18</sup>

If regulation of the size of land holdings is needed, this should be brought about by other methods than by taxation. The experience of the world in such cases seems to favor public purchase of land and its sale to land utilizers in desirable units. But before we attempt regulation we should know the facts. May I again be personal enough to give an illustration taken from our experiences

<sup>18</sup> See Note 5, Appendix.

in Wisconsin? For many years a favorite topic in graduate classes has been the concentration of landed property in the United States. Many have taken this topic with the idea that concentration is going forward, but I recall no single instance in which, at the conclusion of the research, the writer could discover clear evidences of concentration. Very recently a strong and capable group of graduate students took up this subject and different states were assigned to the members for research and report. State after state has yielded the same result, the conclusion being practically this: The large land holding is no problem in Indiana, Tennessee, or whatever the state may be. These investigations have not been finished as yet, and there may be a real problem of large land holdings in parts of the country, possibly in California; but even there we are told by Professor Mead that the large landowners, feeling the weight of interest charges and taxes, would be only too glad to turn their lands over to the state for land settlement purposes, letting the state pay for them after sale to the settlers.<sup>19</sup>

On this whole matter of regulation I have this to say: We do not know enough facts to warrant a program of regulation. Let us get the facts first and then undertake the proper regulation, but not by taxation. Regulation by taxation has its place, but up to the present time not in landownership in the United States.

PRELIMINARY REPORT OF INVESTIGATORS FOR THE INSTITUTE FOR  
RESEARCH IN LAND ECONOMICS

*Summary of Reports in Four States on Agricultural Large Landholdings*

State	Size considered a large land holding	No. of counties reporting	No. of counties reporting no large landholdings	No. of large land holdings for state	Average size of large landholdings reported	Largest in the state
Indiana. . .	1,000	19	....	80	1,670	9,000
Illinois....	1,000	52	7	179	....	13,600*
Minnesota.	800	67	15	237	....	60,000
Tennessee.	800	40	....	200	1,902	....
Total.		178		696		

\* Does not include Scully estates.

<sup>19</sup> See Note 6, Appendix.

## ARE LARGE LAND HOLDINGS DESIRABLE?

Several of the investigators made use of the county agents and other well-informed men as to the desirability of large landholdings in the opinion of the person questioned and the general public in their counties.

	ILLINOIS			INDIANA		
	Yes	No	Same	Yes	No	Same
1. Are large landholdings handled better than small farms? ..16	9		10	5	6	8
2. Should large landholding be broken up? .....15	24		5	6	11	1
3. Would production be increased thereby? .....	7	25	8	6	11	7
4. Would social conditions be bettered? .....	17	13	8	9	8	1
5. Attitude of the public:	<i>Neutral</i>			<i>Unfavorable</i>		
Illinois .....	20		11	4		
Indiana .....	2		7	10		

Compiling the above data, it will be noted that almost 40 per cent of the answers are favorable to large landholdings, 28 per cent are neutral, or the informant is uncertain as to whether production would be increased, social conditions bettered, etc., while 33 per cent of the answers are unfavorable. It is interesting to note that a small number are willing to say that breaking up large landholdings in these states would increase production, but in both states it is admitted by the majority that social conditions might be bettered. But these figures show that the popular impression that large landholdings are considered undesirable does not obtain so generally when people who are in direct contact with the situation are questioned.

The situation in Minnesota is well summed up as follows:

"From the information and data secured the conclusion may be drawn that there is no problem connected with large agricultural landholdings in the state of Minnesota at the present time. The number of these holdings is relatively small and the total acreage in them constitutes such a small portion of the total farm land that it is scarcely a noticeable factor. There is nothing to lead one to believe that the number of large landholdings is increasing either relatively or absolutely. There are some adverse effects, both economically and socially, from large amounts of tenancy, but the evils which may be noted are not peculiar to large landholdings. From a personal investigation made in a large number of the counties of Minnesota, the writer is strongly inclined to believe that men owning several farms are better landlords, on the whole, than those individuals having a single farm which

they rent and from which they must derive all or a large part of their living. Owners of several farms usually have a broader view of the problem and frequently have a better grasp of the tenant's problem than the individual owner. They give more thought, on the whole, to the conservation of the productivity of the land and are usually able to put more into improvements."

There has been much discussion recently of the progressive taxation of land, but I do not feel that at the present time I am prepared to take a position either for or against the principle of progression, so far as it relates to the land. While I am entirely clear in my mind that we do not have that knowledge of facts upon which we could safely base a progressive land tax in the United States, the facts which we do have at the present time lend very slight if any support to progression and on the whole appear to support the principle of proportionality. When we know more than we do now, we may change our policy of taxation in several particulars. About one thing, however, I want to speak very positively and that is, in the public interest we must take a most decided stand against confiscation masquerading in the guise of progressive taxation.

Progressive taxation of land, moderate in amount, so that the maximum is probably no more than land taxation in many parts of the United States, has apparently worked fairly well in New Zealand—not ideally well, but well enough so that the benefits exceed the costs. This is at any rate the impression I received during my visit to New Zealand in 1914; and I hope later to have conclusions based on thoroughgoing and impartial researches. But conditions in New Zealand were abnormal. The country is a very small one and only a minor part of this small country consists of good agricultural land. As a result of historical conditions in the early days of settlement there was a very unfortunate concentration of landed property in vast estates. But it should be borne in mind that the chief work of New Zealand in bringing about suitable economic holdings in individual ownership appears to have been accomplished by purchases of great tracts of land held in one ownership and by sale in holdings of suitable size to settlers so as to bring about "the closer settlement of the land". It is this method that I regard as preferable.

At the same time it may be found desirable to introduce progressive taxation in land, after we know the facts enabling us to formulate wise policies to be attained wholly or in part by this method. At the present time, we do not have the knowledge of facts to enable us to accomplish constructive results by progressive taxation. We can easily enough accomplish destruction by progressive taxation. We could break up companies doing work in

city and country, and we could so cramp and confine operations in landownership as to deprive capable men of scope for their talents in the country and thus concentrate a still larger proportion of the brains of the country in the cities. We gave Washington, Jefferson, Madison, Monroe scope on Virginia farms. We want still to see men of light and leadership living on farms.

Let us also remember that in many countries excessively small holdings of land are an acute problem, and we have as much reason to guard against the increase in the number of too small holdings as against the menace of too large holdings of land.

We have progressive taxation of incomes and inheritances, and these two would seem to afford the right kind of taxes for progressive rates and also ample scope for whatever progressive taxation may be required.

*D. Special Assessments should be Used with Caution even in Cities, but Especially in Rural Districts*

We cannot treat taxation thoroughly unless we bring in special assessments as they have been developed in the United States. These special assessments anticipate increments in land values, and in foreign countries they are regarded as something very radical. In taking a portion of increments in land values by special assessments we go even beyond what progressive thinkers in France evidently consider rather daring. The additional burdens upon land are a stimulus to proper land utilization. They have been used to only a limited extent in rural districts, and their use should be extended, but with great caution. To put upon the landowners the cost of improved roads would mean, in many cases, more than confiscation of the entire land values. Take for illustration the state roads in the Adirondacks. Also, there are cases where the improved, costly modern road may produce a decrement rather than an increment of value, on account of excessive amount of traffic, increasing the danger of theft, particularly to growers of small fruits and orchards, bringing noise and dust, etc. We may develop zoning units for special assessments, but even in cities, while accepting the principle, we must proceed with caution. I knew once a city surveyor who used to return home at night from time to time very depressed because in laying special assessments he had been obliged to come so near to taking all the value of land belonging to poor people.

*E. A Cadastral and Economic Survey*

I venture to recommend a cadastral and economic survey of the land as one necessary step in the solution of our land problems in general and of our problem of land taxation in particular. You are all doubtless familiar with the cadastre of France. This is a

careful survey of the land, giving the characteristics of each piece, in order that the annual rental of the land may be properly estimated. In France it took forty-three years to make this survey, and naturally when it was finished the earlier parts were not entirely satisfactory, inasmuch as changes had occurred. Corrections are made from time to time and in spite of all its imperfections it is extremely useful. What I think we need is something more than a cadastral survey. We want a general economic and social survey of the land of the country. The problem is to make a survey which shall be continuous and yet every year yield valuable results, a crop as it were. Naturally, this would have some relation to our geological survey, but it should be distinct from it although cooperating with it. I do not believe, without such a survey, we can ever satisfactorily solve our land problems, the problem of taxation included.

*F. Investigations are Needed on these Points:*

1. Investigation of Possible Modification of: System of Taxation of Selling Value of Land in the Direction of Taxation of Income Value

There is an increasing feeling on the part of fair and impartial experts that land is bearing too heavy a burden. I believe this feeling is warranted in many places, and in saying this I take into account capitalization of taxes and their anticipation in purchase price. While holding to the American system of taxation on land values, or capital value, on account of the stimulus it gives to land utilization, I would recommend as a subject of investigation the possible modification of our American system by taking some account of the income yielded by land. I am entirely unprepared to say to what extent taxation of selling value should be modified in the direction of the European system of taxing rental value instead of selling value.

2. Comparisons of Systems of Taxation in Different States and Different Countries, Especially with Reference to the Rates of Taxation on Land

One subject for investigation, which I place among my recommendations, is a comparison of land taxation in different parts of our own country, and a comparison of land taxation in our country with that of other great civilized countries. At a meeting of the Farm Mortgage Bankers Association, in September, 1920, I ventured to make this statement:

"Strange as it may seem, it is extremely difficult to get the data which would enable us to compare with accuracy the taxes in this and other countries. We have plenty of general



statements, but when it comes to accurate and detailed knowledge we have here an almost unworked field. I believe, however, that it can safely be said that no other civilized country places such burden upon land as rests upon it in the United States. We may go even further, for I venture to make this statement as at least not improbable: If those present at this gathering select the six European countries which they regarded in 1914 as most highly civilized, and should compare the taxes they placed upon land with all the fiscal burdens (taxation and special assessments) resting on land in 1914 in a typical American state with a highly developed and well administered system of taxation, say Wisconsin, it would be found that the burdens resting on land in the American state were twice as high in proportion to true selling value as in the European countries."

No one so far has ventured to refute this statement, which is in all probability an understatement. It is certain that in many parts of Europe in 1914 the tax on unimproved urban land was not one-tenth of what it is in a typical American city. It is to be strongly urged that we have a thoroughgoing investigation to give us all the facts.<sup>20</sup>

"TAXES MAY BE ALMOST EQUAL TO RENT.

"Oats at 15 cents the bushel; old corn going for 40 or 45 cents a bushel—that causes the groans. A Springfield farm owner today spoke of his land—it bore twenty bushels of oats to the acre, a sparse yield and far below the average. A tenant works it on shares. Last week the tenant took a load of oats to town. It brought \$12, or 15 cents a bushel. On a fifty-fifty basis, this made the owner and tenant each a gross return of \$1.50 an acre.

"The taxes alone were \$1.25 an acre. The seed itself cost 70 cents a bushel last year, and at three bushels to the acre it meant \$2.10 for seed alone, to say nothing of labor and feed for the horses and general upkeep expenses."

### 3. Leasehold System of Land Tenure

It is recommended that we should make an investigation, more careful than has ever yet been made, of the leasehold versus the freehold as a system of land tenure; and that we should consider this from the point of view of possible revenues as well as from the point of view of better utilization of land. It has been suggested by various writers, and doubtless has occurred to every thoughtful person, that the United States could have kept the title to its land and let it out, receiving rent instead of taxes. It has been deplored that this policy was not adopted in our early history. Wherever the leasehold has been widely tried, however, it seems not to have produced satisfactory results. New Zealand offers an

<sup>20</sup> The following is from the Arthur M. Evans' letter in the *Chicago Tribune* of August 31, 1921:

illustration. There is great danger that valuation will be kept down and that rent will yield less than taxes, though it involves far greater administrative perplexities and difficulties. Many illustrations could be quoted from American history, and this subject is now engaging the special attention of one of my younger associates. We have not such a fact-basis as we would like to have before drawing conclusions, but so far all indications are that on the whole the fee simple title of land secures the best results, financial as well as social. The tendency is to get fee simple title in one way or another, and almost an irresistible tendency. I recall a conversation with a gentleman in the Government Building, Wellington, New Zealand. Almost with tears in his eyes he asked, "What shall we do to keep the public ownership of the land?" He said something like this: "We invite people to come and settle on the land as leaseholders. We build them up and make them strong, and then they vote into power the party which promises them the freehold." This seems to me inevitable. The question then is: Do we not get the best results if we allow this natural development to take its course, control the land so far as may be necessary by the police power, and secure from it the revenues which, in our American system, may be vast, by uniform direct taxation?

It is recommended that no obstacles be thrown in the way of experimentation in the public ownership of land. Let cities which desire to do so, buy additions by the acre, plat this land and let it on ground rents to builders. In that way, through public activity, an effort could be made to secure increments of land value greater than those afforded by our system of taxation.

Very little experimentation of this desirable kind has been tried in the United States. Savannah, Georgia, has made additions to the city by purchasing land by wholesale and selling it at retail. in many cases, on the ground rent plan but without, in the early days, reserving the right to revise the ground rents. I have no recent report on what has happened in Savannah, Georgia, but when a generation ago I was a member of the Maryland Tax Commission I visited that city and gathered the impression that on the whole a moderate success had been achieved which should have been a greater success.

Foresight and good public administration, attracting to the civil service a due proportion of the talent of the country, by offering men and women real careers, ought in many cases to secure considerable increments of land values for social purposes, and that without the slightest trace of confiscation. The modern city in any case should for many reasons (not to be discussed here) be a large landowner and a buyer and seller of land—on the whole, however, more for social than financial reasons.

Some foreign cities are achieving noteworthy results by public ownership of land. Birmingham, England, may be cited. Perhaps the best results have been achieved by Ulm on the Danube, and this I have described elsewhere.

But the experiments of this kind should be undertaken soberly, discreetly, with a consciousness that success is not to be lightly and easily attained, as the shrewdest private operators know only too well.

During the World War the United States Housing Corporation undertook to reap increments of value due to social causes by constructing new towns, and this appears to have been successful in no case. Mr. Henry W. Brigham, Counsel for this Corporation, tells the story in the *Atlantic Monthly* for March, 1921, entitled "How to Meet the Housing Situation". The following is a quotation from his article:

"The land value of residential property depends almost entirely on neighborhood: the nature of the neighboring buildings, the classes of people living or working in them, and the accessibility of points of interest, such as business centers, factories, churches, schools, and places of amusement. In a city or town in which public utilities have been installed, the value of these utilities usually merges with the value of the land, and no distinction is made; but in considering the value of land that has not been improved by utilities, the accessibility to such utilities and the cost of extending them to the premises are very material considerations.

"The greatest loss that the United States Housing Corporation sustained was where it had built a 'model town' outside the limits of the neighboring city. It could have built houses inside those limits, where utilities were already installed, much more quickly and more cheaply; for the cost of improved vacant lots in the city was less than that of the improved acreage plus the great cost of utilities. The attractiveness of the finished new town was not enough to offset the disadvantage of a long car-ride and to pay the increased cost of utilities. This is a point which deserves special consideration today in undertaking any new housing scheme. Taking advantage of the utilities already installed at pre-war cost will often mean a large saving in building cost."

#### 4. Taxation of Forest and Mineral Lands

Time has been too limited to allow me to go into the perplexing question of the taxation of forest lands and mineral lands. I am familiar with the report on Taxation of Mines by the committee of this Association. It views the whole subject from the point of view of revenues of local political units. It is indispensable that we should provide appropriate revenues for our local units. I fail to be convinced, however, that the best method to provide these

revenues is by means of the taxation of these lands, including the forest and the minerals, on the basis of selling value with the same tax rate as that laid upon urban and agricultural land. There is a very serious problem of conservation involved, which has received inadequate consideration by your committee. Possibly the word conservation has ceased to have a sufficiently definite meaning. We cannot go into this at length in the present place, but in relation to forests we may say that it means the continuous production of an economic supply of essential forest products; and in relation to minerals and other products which are used up once for all, we may say that the problem of conservation is a problem of economical use with a proper balancing of present and future needs.

If I may venture to make a recommendation in respect to these lands, it is that the whole subject should be re-examined with respect to conservation, with respect to the relations between present and future needs, as well as with respect to the requisite revenues of the local political units where mines and forests are situated.

#### 5. Thoroughgoing Investigation of the Theory and Practice of Indirect Taxation

In Part I it has been already recommended that a painstaking investigation be made of the theory and practice of indirect taxation, and this is repeated in this place. Indirect taxation is in this connection to be construed broadly, so as to include consumption taxes and the various sorts of sales taxes that have been proposed and seriously discussed.

### VIII. GENERAL CONCLUSION

In conclusion, however, let me emphasize the fact that our American system of taxation where it is well carried out and well administered—even fairly well, as it is in many states, for example, Massachusetts—means this: An ownership of a very large proportion of land values by the community. May I relate in closing this paper a personal incident? When, in 1911, I gave a paper before the Verein für Social Politik at the annual meeting in Nuremburg, I called attention to the technical aspects of the American system of taxation, especially with reference to urban conditions. At the close of the address a moderate German single-taxer, who had studied conditions in the United States, said to me, "You in America already have all that we want."

## APPENDIX

## NOTE 1

One respect in which indirect taxes are superior to direct is to be found in the fact that they are paid in very small sums and very generally are not noticeable. Now that taxation has become so heavy, it is to be recommended that we should take administrative measures to confer upon direct taxation as many of the facilities and conveniences of indirect taxation as possible. It is a great hardship to many people that the taxes on land and buildings have to be paid in nearly all parts of our country once a year. It would make the tax much easier and lessen the sacrifice if the taxes could be paid quarterly. Certainly we would protest if we had to pay our gas bills once a year instead of monthly. This may seem a trivial matter to people with abundant funds, but those who have had large experience will know that there are millions of people in the United States to whom it is a matter of real significance.

It is to be desired that as large a number of people as possible should be put in a position to pay direct taxes; and by better administrative measures, like payments at rather frequent intervals, and by popular education in economics bringing home to the masses the benefits they receive from public services and the righteousness of contributing to the expenses if they are able to do so, an increasing number may become direct taxpayers. As John Stuart Mill showed, what can be done by direct taxation depends to a considerable extent upon general enlightenment and the degree of integrity reached by the great mass of the people with respect to public obligations. Mill feared, for example, danger of repudiation of public debts if, at the time he wrote, exclusive reliance should be placed on direct taxes. Have we reason to think that the conscience of the modern nation has grown more sensitive since Mill wrote, in the middle of the nineteenth century?

The following quotation from Mill deserves careful consideration:

"If our present revenue of about seventy [1862] millions were all raised by direct taxes, an extreme dissatisfaction would certainly arise at having to pay so much; but while men's minds are so little guided by reason, as such a change of feeling from so irrelevant a cause would imply, so great an aversion to taxation might not be an unqualified good. Of the seventy millions in question, nearly thirty are pledged, under the most binding obligations, to those whose property has been borrowed and spent by the state; and while this debt remains unredeemed, a greatly increased impatience of taxation would involve no little danger of a breach of faith. . . . But while much of the revenue is wasted under the mere

pretense of public service, so much of the most important business of government is left undone, that whatever can be rescued from useless expenditure is urgently required for useful. Whether the object be education; a more efficient and accessible administration of justice; reforms of any kind which, like the Slave Emancipation, require compensation to individual interest; or what is as important as any of these, the entertainment of a sufficient staff of able and educated public servants, to conduct in a better than the present awkward manner the business of legislation and administration; every one of these things implies considerable expense, and many of them have again and again been prevented by the reluctance which existed, to apply to Parliament for an increased grant of public money, though (besides that the existing means would probably be sufficient if applied to the proper purposes) the cost would be repaid, often a hundredfold, in mere pecuniary advantage to the community generally. If so great an addition were made to the public dislike of taxation as might be the consequence of confining it to the direct form, the classes who profit by the misapplication of public money might probably succeed in saving that by which they profit, at the expense of that which would only be useful to the public." (Bk. V, Chap. VI, § 1.)

## NOTE 2

The avoidance of industrial investments by people of small means is incidentally brought out by Professor T. S. Adams in his article on "The Fundamental Problems of Income Taxation," in the *Quarterly Journal of Economics* (August, 1921), in the following passage: "The great mass of small investors to whom the tax rate is a negligible factor do not seek miscellaneous business investments and should not be encouraged to do so. It seems to be the opinion of the banking and investment world that industrial investments are in the main made by persons to whom the tax rate is a real factor, and this is probably the case" (page 550).

## NOTE 3

"It is obvious that so far from penalizing land in any form we ought rather to regard it with peculiar affection. Were it the sole subject of property, other arguments might apply, but in England, where the income from it is not an eighteenth of the total income of the country, it is folly to unsettle laws and customs on which as a whole our mighty prosperity has been founded.

"Further, it is doubtful if property in land is a whit more dependent on general prosperity than any other kind of property."

(From the *Social Contract*, by C. Y. C. Dawbarn, pages 97 and 98.)

## NOTE 4

Speaking of conditions in England about 1875, W. H. Mallock writes as follows:

"On the whole, social conditions then prevalent in London coincided with what, in the country, I had known and accepted when a child as part of the order of nature. Of society represented by a definite upper class, the basis was still inheritance in the form of inherited land.

"This was no mere accident. It was a fact, definitely explicable in terms of statistical history. At the time of the battle of Waterloo, outside the landed class there did not exist in England five hundred people whose incomes exceeded five thousand pounds a year. The landed class was typically the rich class of the country. The condition of things since then has in this respect been reversed. During the sixty years succeeding the battle of Waterloo, business income exceeding five thousand pounds a year had increased numerically in the proportion of one to eight, while since that time the increase has been still more rapid. On the other hand not only has the number of the large agricultural landlords shown no increase whatever, but since the year 1880 or thereabouts their aggregate rental has suffered an actual decrease, having fallen in the approximate proportion of seventy to fifty-two. This shrinkage in the fortunes of the old landed families, except those who were owners of minerals or land near towns, and the multiplication of families newly enriched by business, were, when I first knew London, proceeding at a rate which had never been before. It was, however, slow in comparison with what it has been since, and the old landed families, at the time to which I am now alluding, still retained much of their old prestige and power, as is shown by the fact that the leaders of both political parties were still mainly from the limited class in question."

(Taken from the book entitled, *Memoirs of Life and Literature*, by W. H. Mallock. Harper and Brothers, 1920, pages 92-94.)

## NOTE 5

How different would have been the situation in Madison, Wisconsin, had we introduced the reform advocated by the late Mr. Fillebrown in his *A B C of Taxation* and in many other publications. He proposed to confiscate land values—or if we want to avoid the harsh term, let us say appropriate—during a period of thirty years. If we had had this system in Madison, where land values have been fairly stable and on the whole increasing gradually, a young man going to his banker or to some capitalist to borrow money for a home would not have been greeted with a smiling face, beaming assent, but with a sober mien of countenance and a shaking of the head. Should any doubt this, let them com-

pare the situation like that that I have described in my home city with the situation in cities where land values are slowly decreasing. There are abundant opportunities for such comparisons. Where there is stability and especially a slow increase in values, a man of character and capacity, with even a half-way assured position, finds it extremely easy to borrow money for the construction of a home, and it is rare, indeed, that the money-lender suffers loss. The oldest building and loan association in Madison, which is now thirty-eight years old, has only once foreclosed a mortgage in all that period. Twice, in addition, it began foreclosure proceedings, but before the foreclosure had taken place payment was made.

I fear what Mr. Fillebrown recommends would be about as merciful as the infliction of capital punishment by cutting a man to pieces an inch at a time, beginning with his feet, instead of cutting his head off with one stroke.

## NOTE 6

"Land owners not only offered to turn large tracts of desirable land over to the Land Settlement Board as trustee, but in addition agreed to provide money to land settlers under the terms of the State Land Settlement Act in order that development might be carried out promptly. . . .

"What you say about Michigan is of great interest. Here land is too valuable to become state property, but the inability of land owners to pay interest on mortgages threatens to cause a great aggregation of land holdings by the banks. I learned recently that the Province of British Columbia in Canada has taken over so much land through non-payment of taxes as to cause this to be a grave question."

(Extract from letter from Professor Elwood Mead, University of California, to Dr. Ely, October 3, 1921.)

## NOTE 7

I think John Stuart Mill perhaps the wisest of all the economists because he could see so many sides of our economic problems and because of his sense of justice. No one sympathized more deeply with the aspirations of the less fortunate groups in the community, but he did not forget that the rich were, after all, human beings with rights, and capable of feeling pleasure and pain. Mill was sensitive to wrongs to any and every social class; and he knew that without public as well as private honesty, integrity and faith-keeping with people, all hope of advancement was illusory. The following passage affords fine illustration and it should be remembered in reading it that on account of his sympathy with the wage-earner and the radical nature of some of his proposals, he has frequently (even if without sufficient warrant) been ranked with the Socialists.



"If the rich regard the poor," says Mill, "as by a kind of natural law, their servants and dependents, the rich in their turn are regarded as a mere prey and pasture for the poor; the subject of demands and expectations wholly indefinite, increasing in extent with every concession made to them. The total absence of regard for justice or fairness in the relations between the two, is as marked on the side of the employed as on that of the employers. We look in vain among the working classes in general for the just pride which will choose to give good work for good wages; for the most part, their sole endeavour is to receive as much, and return as little in the shape of service, as possible." (Bk. IV, Chap. VII, § 4.)

SECRETARY HOLCOMB: It is hardly necessary to express to you, Doctor Ely, the thanks and the appreciation we feel for this address. It is certainly very kind indeed of you to come here and give us the advantage of your long experience. I predict that there will be a hunting about for that volume that was referred to by Judge Leser, and I assure you that my copy also has no dust on it.

The secretary finds himself in rather a defenseless condition. Usually he is protected, so I am going to call on Senator Lord to come and preside for the balance of the session, in the absence of Judge Leser—Mr. Lord, Vice-President of the Association.

SAMUEL LORD of Minnesota, presiding.

CHAIRMAN LORD: Gentlemen of the conference, I know that you have been, as I have been, greatly interested in the address of Doctor Ely. The subject of land taxation in all parts of our country has become a burning question. I had occasion a short time ago to address a commercial club in the little city of Owatonna, Minnesota, and before going down I took pains to investigate for that particular community, not so much the City of Owatonna as the farming community surrounding the city, in Steele County, to see how taxes had grown or increased in that community in recent years, and I discovered what to me was an astonishing fact, that while twenty years ago farmers of that county were required to pay in taxes on the average twenty-five cents an acre on their lands, in twenty years the tax rate in that county had increased from twenty-five cents per acre to one dollar and forty-odd cents per acre, an increase of almost six times. Now, if the same measure of prosperity were to remain there, it is possible that the farmers could stand a strain of that kind in a prosperous community, but with the declining prices of farm produce in Minnesota, the tax situation for the farmer is becoming a very serious problem indeed, and it cannot increase very much over the

present rate without very materially retarding the progress of the state. So, I say that land taxation has become a very serious problem, and now, without taking up any more of your time—and that thought occurred to me while Dr. Ely was making this address—we shall be glad to hear from any of you, anything you have to offer on the subject of land taxation. Limit your time, however, to the regular schedule of five minutes.

W. B. BELKNAP of Kentucky: I have just gotten back from a trip through England, and I had the good fortune to talk to a number of taxing authorities there and to a number of men who have the interest of the public at heart in one way or another. The one wail that was brought up in every corner of England was the weight of the land tax. I asked what was going to be the result of this. The general feeling was that all of the big estates were going to be broken up, and were being broken up just about as fast as they could be sold off. I got various and sundry predictions as to the future. One man, who is a very intelligent gentleman, who had been a member of Parliament, himself a very large land owner, a very wealthy man, who keeps his estate intact, said that what would happen would be that the land in England would get into the hands of the small farmer; that in this recent time of prosperity a lot of the smaller farmers bought lands from their landlords—that is, the renters did—and gave notes for it, and now they were in a very serious financial condition, due to the fact that they had given notes which they could not meet. I said, "Where does that lead to; what is going to happen; are the people who held the land formerly going to take it back?" "No, they are out of it; most of the notes are held by the banks, and what is going to happen is that most of the men who have made money in the cities are going to buy up that land, and we are not going to have any smaller holdings than we had before, but we are going to have a new crop of landlords." That was rather an interesting point of view and rather a new one to me.

I think the main lesson that we have got to learn from this English situation is that we have got to keep the taxes down on farm lands to a reasonable limit, no matter where else we put the tax; that is one place that we have got to draw the line, and realize that the limits that Professor Ely pointed out are very, very low when it comes to any elasticity. You cannot stretch that tax but a very small amount.

J. VAUGHAN GARY of Virginia: Did I understand you to say that that condition in England was due to the land tax?

MR. BELKNAP: It is not due entirely to the land tax. It is due partly to the other taxes on inheritances and all incomes, but it is

largely due to the land tax. The fact of it was, of course, that in England, the people with large incomes usually held large estates and paid the difference out of their income, but the very heavy taxes on land have prevented their being able to afford to even up that difference, and the men who held them as investments could no longer hold them.

MR. GARY: I asked that simply because I understood that condition was ascribable entirely to the income tax.

MR. BELKNAP: No, not entirely, by a great deal.

CHAIRMAN LORD: We should like to hear from others.

W. A. HOUGH of Indiana: I should like to ask the gentleman what is the land tax rate.

MR. BELKNAP: It is very difficult to compare the land tax rate. I think Professor Ely can most likely tell you more than I could. The tax rate there is entirely on the rental value. They speak of a tax rate as being ten shillings and a pound or half a pound and a pound. They mean by that, that if you rent a piece of land for five dollars, or a pound, per acre, you pay one-half pound tax to the government beside paying the pound to the owner. The rates are running all the way now from a pound—well, about fifteen shillings and a pound, apparently to two pounds and a pound. I think I saw one case in Wales where the taxes were certainly between forty and thirty shillings to the pound. That is, if you paid five dollars an acre rent for the land, you paid ten dollars tax on it. That was the extreme. The tenant pays the tax in England, in most cases; that is not always true perhaps, but it is very hard to get at that exactly, because there has not been a recent reassessment, and when you say "recent" in England, you mean within the last fifty years.

CAPTAIN WHITE: Hasn't that increase in taxation been due to the increased returns from the land during war time, whereas the price of products has declined?

MR. BELKNAP: The increase in taxes is due to the fact that the government needs one billion pounds annually, and the best estimates I saw on the total national income were about three and one-half to four billion pounds, so that the government is taking very, very close to one-third of the whole national income.

CHAIRMAN LORD: I think we better take this in order. We will be glad to hear from others. Dr. Bullock, we have not heard from you. I for one—and I think every one here—would like to hear something from you on the subject.

MR. BULLOCK: Mr. Chairman, Dr. Ely was my teacher. I started to study taxation with him many years ago, and in talking to this association at different times I have been talking Dr. Ely's good dope. I don't think that it is necessary this evening to say very much by way of supplementing what he has said. However, one thing occurred to me in connection with one of his remarks, about the very moderate gains that land owners as a class derive from land and the really unsubstantial character of this unearned increment, and the great harm that this widespread talk about unearned increment actually does. We have in this country now certain institutions that have had two hundred or more years of experience in buying and selling land in their localities. Harvard University is such an institution. In the City of Cambridge, Harvard University has over and over again sold land that it did not need, and then bought that back forty or fifty years later at an enhanced value, and in every case has made money, because the purchase price received for the land at the time of sale, invested at a moderate rate of interest—as little as four per cent—has invariably amounted to more than the price at which the land was subsequently purchased. Yale University, I am told, has had the same experience. Anybody who owns any land or an institution which owns any land it does not need will make money by selling it at the current market value. Harvard has had that experience over and over again. Generally speaking, you can say that the man who goes in for the unearned increment in land value is betting against a compound interest at four per cent, and the fellow who bets against four per cent compound interest is a sucker.

E. M. SMITH of Iowa: I am very much pleased indeed with the great benefits I have derived from this meeting, the first of its kind I have attended, and I am particularly pleased at this time with the emphasis that is being placed on one of the great dangers that confront the people of this country. At this time I will only impose upon your time long enough to give one concrete example that carries with it the lesson. In my opinion that was brought home a few weeks ago in a little town of about six hundred people in southwestern Iowa, including, as they found it, a rural area around the town of strictly agricultural property, included in the corporation; and I might explain here that in Iowa you can tax a farm within the corporate limits for municipal purposes. In the concrete example I am about to give you, there was a widowed woman who owned a farm, which was rented in the regular way for a cash rental of \$1325. Her taxes for the same year—last year, if you please—were \$1375 on that farm, or \$50.00 more than her actual total income. That of course may be a striking case, but it shows the dangers, and that there must be a limit on land taxation.

CAPTAIN WHITE: I should like to know if the experience of the tax assessor has not been that the burdens of taxation are visited by acts of the state legislature rather than by the action of the local bodies. I will quote a specific case. Massachusetts requires the municipalities of certain populations to provide themselves with hospitals for tuberculosis patients. We have one in Lowell. It cost us \$150,000 to build, and I went out there to visit the institution last winter, and found about twenty patients. Those patients, however, were incurable patients. The hospital was built for the purpose of taking care of the incurables and giving them a good comfortable place to die. Now, the state has several institutions for the cure of tuberculosis, but that is one of the kind acts of the legislature in visiting on a local community taxation for humanitarian purposes, which otherwise would not have resulted had the local taxpayers been consulted in regard to the development.

H. S. VAN ALSTINE of Iowa: I should like to ask Mr. Bullock if in his comparison of the earning value, the price received by the college for that and, as compared to the purchase price at which they repurchased it, he gave credit to the owner of the land for the earning power of the land during the time that he owned it.

MR. BULLOCK: No, not to the extent that he got a fair rate of interest, but I am speaking of the increment. Now, in some cases it remained vacant during the period that it was out of the possession of the college. In other cases there were houses on it, and the owner got a return from the houses. But, assuming in those favorable cases that the return from the houses gave a fair rate of return, he got no income. The college invariably has rebought—and Cambridge is a growing city, where values appreciated abnormally—for less than it would have cost it to hold the land out of use, without income from it.

MR. VAN ALSTINE: Wouldn't the same argument apply to all kinds of property if you did not count the earning value of that property during a long period of time?

MR. BULLOCK: Four per cent interest is less than a person, over such a period, would have secured by buying good bonds in Massachusetts. When the college sold the land, for instance, state bonds could have been bought that yielded five per cent. When it repurchased, the state bonds could have been bought for four per cent. During most of the period the land was out of possession of the college, the person buying the state bonds would have got five per cent. There are at least some kinds of property that would have shown a better return. Dr. Ely mentioned the reasons

why land investments do yield a smaller rate of return than many other classes of property, and went into that pretty fully. My judgment is that he is right in thinking that the rate of return secured by those who own land, is a moderate return, less than that secured in many other lines.

MR. VAN ALSTINE: I wanted to say that I observe on this chart that the average income from rented farms in Wisconsin is six per cent. If your college land earned six per cent to the owner of that land during that time, and the college loaned the money at four, the land owner would be the winner by two per cent, would he not? That is the point I make.

MR. BULLOCK: This land is not in Wisconsin. If the college had been in Wisconsin its funds undoubtedly would have been invested in good mortgages yielding six per cent. The calculation would have been the same. Situated where it is, the funds brought in a more moderate return. The college never earned six per cent of its funds within the time we have any record of.

GEORGE VAUGHAN of Arkansas: This discussion tonight, tending to show the enormous burden being borne by lands, suggests to me another thought; that in all this burden of taxation we have not taken into account the great burden of special taxation that results in those states where the special improvements are paid for out of taxes that are borne by real estate alone. I think the discussion has been confined to the ordinary taxation for governmental purposes, and I hope that at some future time this association will devote a large section of the program to a discussion of special improvement taxes. Now, in my state of Arkansas the greatest hue and cry of the burden of taxation is for special improvements. The taxes where they are paid for special improvements exceed apparently in burden very largely the ordinary taxes, and I want to say, as a result of very careful statistics made in our state, that the cost of total state and local government, including schools, does not exceed one and one-quarter dollars on every one hundred dollars' worth of actual value. Now, Brother Link today in speaking of the taxes in Colorado I think said that taxes ranged throughout the state from three per cent on up to six and eight per cent—perhaps three per cent throughout the state. I think that is rather higher than it would be throughout the United States, but I know in Arkansas the ordinary taxes, the taxes we have been discussing, do not exceed a rate of over twelve and one-half mills on the dollar of actual value. But when it comes to special improvement taxes we have always thought that they are justified because of the special benefit derived, because of the foundation on which they are levied. In Arkansas we have

no public debt. The whole debt of the state as a state does not exceed one million dollars, so we have no interest to pay, but we do have to pay for the bonds issued in those special improvement districts. It was not brought to my attention before that when a man is betting against compound interest at four per cent, he is a sucker. That is a very vivid thing to state, and I think it ought to cause us to reflect on the fact that that four per cent is more remunerative than other forms of investment in real estate. For example, when we have the burden of taxation to pay, we have not mentioned special taxes.

DR. ELY: I should like simply to explain that I, in my book here, discussed special assessments, but there was not time to read that part of the paper. I did not overlook it.

GEORGE J. TUNELL of Illinois: It is hard for me to understand why if land is such a worthless possession people pay more and more for it year after year. Now, I happen to have lived in southern Minnesota from the time I was two and one-half years old until I went off to college. In Freeborn County, which adjoins the county of Steele, just before I went away to college, you could buy land ten miles from the county seat, for eight dollars an acre. That is the raw land. You cannot buy that land with improvements today for less than \$175. I happen to have been pretty closely in touch with land values. Some of my people were farmers, and my father knew most of the farmers in Freeborn County, and when I ride through that county today, I still know those places and know the farmers, and my relatives keep in close touch with the farming situation. I know whereof I speak. I know you cannot buy land for less than \$175 an acre that, not so many years ago, you could have bought for eight and ten dollars an acre, and some for five dollars, a little further away. Now, how does that come about? We are told that nearly half of the farms in the United States are now operated by tenant farmers, which indicates that other people have put their money in those farms with the expectation of realizing profits. Now, if they are not realizing profits, then a large number of them must be badly fooled and poor business men. I could very well understand how that might be done for a time or it might be done by a few people, but the number of people is constantly increasing and the value of these farms is constantly increasing. There seems to be a heterodox note here tonight.

MR. MCKENZIE: I am very thoroughly familiar with the value of those farms out there. Are you just as familiar with the returns that those farms net their owners every year?

MR. TUNELL: I cannot understand how a man will buy more

land and other men will purchase land at these high prices, if they are not obtaining something like a fair return.

MR. MCKENZIE: Dr. Bullock says they are suckers, and the reason is because a man wants to own land.

MR. TUNELL: I don't accept that as a good reason, because I don't think half of the people of the United States are suckers.

MR. BULLOCK: I cannot fully answer Mr. Tunell's question, but I can in part. When land in that county, like land in other parts of the country that is relatively newly settled, was sold for eight or ten dollars an acre, that was done by the people who went out there and built up those communities in the frontier condition. If they sold at that price they made a bad investment of their time and labor. The first generation of settlers in any new part of the United States endures all kinds of privations; the work is extremely hard. They do not get what people of the present day would call a decent living out of it. They take their pay in the enhancement of value. That does come perhaps during their lifetime, toward the end of it, or during the lifetime of their children. There is of course a very considerable increment of land value; no one questions that; Dr. Ely don't and I don't. What I said was that that increment was a very moderate increment, and that in settled parts of the United States it was not as good as four per cent compound interest. Now, in these newer districts, of course there are people who know enough to buy land when it is cheap and to sell land at the top of a boom, such as we have just been going through, and lots of people out in Minnesota and here and there have been selling their land to suckers at three or four hundred dollars an acre, during the last two or three years, and those suckers now have their mortgages, with wheat and corn and live-stock at very low prices, and they are going to be bankrupted or else they and their children are going to live on the land and work a generation to work the problem out, where they have bought at these prices. None of us, I suppose, question the fact of the steady increase of land value in a growing community. Dr. Ely's point was that that increase on the average is a moderate one, and that those who get it, if they are original settlers in a community, pay for it directly, pay for it in hard work, in privation, and shortened lives, and it is mighty slow in coming, and that the land owners do pay for it in taxes and special assessments and in contributions, and in a mighty long wait, which eats up the property.

MR. VAN ALSTINE: I would like to ask Professor Bullock how he reconciles his statement that this land is not worth four per cent income with this chart that shows that rented land is bringing six per cent income.



MR. BULLOCK: My four per cent figure is from Massachusetts. As I already said, a similar transaction in the university out there would have shown their university funds yielding six per cent interest, and land at six per cent, so that four per cent, which is the proper figure for Massachusetts, would not be the proper figure for Wisconsin.

MR. TUNELL: I have seen a good deal of farm life, and I do not believe people on the farm work any harder upon the average than the people in the city. The people on the farm do work long hours during certain months of the year, but there are other long periods of time when they take it mighty easy. And as for the suckers who bought the land at high prices, I don't think they are going to get left so badly as many people imagine, because if you go out in that community today you won't find it possible to find land much cheaper than these prices that were paid for the land two years ago. There is a little shaving, but not very much.

MR. C. P. LINK of Colorado: Mr. Chairman, I am personally surprised. I might say that my life and the life of my people on both sides have always been on the farm. I am surprised that the statistics show six per cent earnings, and I should like to ask Professor Ely how those statistics are figured.

DR. ELY: These are figured on the returns made to the Tax Commission of Wisconsin, by Mr. Altmeyer, who was in the tax commission and worked with it. I think perhaps Judge Lyons could tell you something more about these returns, how you get at them. I don't think these returns of six per cent on land would hold now. I think that is a pretty high return. Certainly in many parts of the country the returns would be a good deal smaller, but I want to say this, Wisconsin is a good deal of a dairy state. Two-thirds of the cheese of the country is produced in Wisconsin, and the farms are rented on a partnership basis. While he is a tenant, he is a part owner of the stock, and he is a business man, and dairying has been pretty profitable during the last ten or eleven years; and Wisconsin is a great breeder of cattle, and the cattle are sold at very high prices. Men come from all over the United States, and from foreign countries also, to buy cattle in Wisconsin, and Wisconsin is an extremely prosperous agricultural state — extremely prosperous — unusually prosperous. We have a certain combination of circumstances making the returns very large relatively upon the farms of Wisconsin, but I should like to hear from Judge Lyons perhaps in regard to the way in which these figures are gathered.

THOMAS E. LYONS of Wisconsin: I should like to inquire from Doctor Ely what year or years are used in making that computation.

DR. ELY: It took much more time than was anticipated. When I left home Mr. Altmeyer had not finished these charts, so I have not had a chance to talk with him about them. Are the years here not given? That is an omission. You can imagine it would take a good deal of time to make up these charts.

MR. LYONS: I share with Mr. Link surprise at the high return. I am very sure that the cash rental paid in Wisconsin would not amount to that sum over any considerable period of years.

DR. ELY: I might say he took into account the share rent, not cash rent.

MR. LYONS: I assume he did. Now, the share rentals would show better, and it depends very much on the period used. I think that those figures might be based on the last two years, or possibly an average of the last three years. But if it were a pre-war period I should say that the figures were high for either a single year or a three or five year period. My understanding has been, as far as we have investigated—and I do not profess that we have investigated that particular subject with any degree of thoroughness—that three and one-half to four per cent was the average return of cash rentals; in fact, three and a half was the standard reported cash rental return on the value of farm land in that state, and from the adjoining states. Investigations were made in Jefferson County, for instance, and in some of the others. I think it probable, with the greater accessibility of the returns and the greater thoroughness of the returns, that Mr. Altmeyer relied on later years. During the war period and high prices, tenants were very willing to pay higher prices, and they did of course, and were stimulated to do that, even for a two-year period or three-year period, which extended it beyond the period of war profits.

MR. LINK: My business has been farming. I have the pleasure of owning my father's homestead in Colorado where he lived long before I was born, fifty years ago, and what little savings we have it has been my pleasure and comfort to invest in lands, and I wish to say that that investment has been made premeditatively. I have realized for twenty-five years that from an earning standpoint, the profit is not there, and I believe that I have operated farms and ranches with ordinary intelligence. In Colorado the question constantly comes up that lands are under-assessed as compared to other classes of property, and we constantly reply that if we figured land as we do other lines, giving credit for from six to eight per cent net earnings, we should virtually wipe out our land values, and I know that that is true from an earnings standpoint. The profit is not in land. We have exceptions to all rules. Occasionally you see a farmer make a fortune in a short time, but ninety per

cent of the cases are very conservative, and it takes the combined work of a farmer and his family and his investment to make a living. Counting wages for himself and family, and figuring the overhead expenses, as in other lines of business, I do not believe the farm would net two per cent. Now, on the proposition of the increased value, if a man buys land, buys it conservatively and right, in the course of twenty years his increase in value will make a fair return; certainly not more than fair. With all due respect to the statistician there, six per cent net on the land looks to me like some of our commercial club figures, where they want to bring settlers in and sell lands, because in conservative figures we cannot get them in Colorado. I have dozens upon dozens of old acquaintances in Colorado upon both ranches and farms who have rented their ranches on shares and gone to the cities, many of them not able to retire and working for wages. Why? Because they say they can make more money.

F. H. VANDENBOOM of Michigan: I am in a peculiar situation. About two years ago I was burned out; I am not worrying about that now, but what I want to say is that the trouble with the average farmer is that he does not do enough business on his farm. Two years ago or just prior to this fire I speak of on our little one hundred and fifty acre farm our cash sales during that year were twenty-four thousand dollars. We were up and doing business. What I arose to say was, if some of these gentlemen who find that they cannot make six per cent, and are worrying about four per cent on farms, will come up in northern Michigan we will show them how to buy a farm and keep it three or four years and double the money. I know from experience. I was wondering when you were talking about six per cent how the average would come out if he borrowed all the money to buy the farm. I have bought several good farms that way. I bought a farm seven years ago for thirty-five hundred dollars, and the farm had been begging a buyer for two or three years. The asking price was four thousand dollars. I was over with the cash—somebody else's cash. I bought the farm and immediately put a family on it, which gave me a fair return as I went along and paid the interest on the money. I made a loan for five years and then had the loan extended for another year or two and only used the extension for six months, and then sold this farm for six thousand dollars in cash. I recently bought another farm—two years ago—which farm was begging a buyer at \$4500, and kept on begging a buyer at \$4000. I had no intention of buying that farm because that was just after I was burned out by fire and lost about thirty thousand dollars; but I intended to get an option on this farm for another fellow who buys land all the time, but he failed to come and look at the farm, and the gentleman who wanted to sell the farm

took my word for it that I would bring the man up, and was very much disappointed when I failed to bring him there as I said I would. I said, "I am sorry I could not get that fellow up here, but if you want to take \$3500 I will buy the farm myself; I will give you the cash tomorrow morning." Before I had my breakfast they were down to tell me that I had bought the farm; and now I am just about to sell the farm for eight thousand dollars.

C. A. DYER of Ohio: Over in Ohio they have a statistical department at the College of Agriculture, and last year they kept account of two groups of fifty farmers. These farmers owned their land. The income from the tenanted farm or rented farm is not a fair measure of what the owner would get if he owned the farm and ran it himself as a permanent investment. I guess you all understand that, because a tenant does not treat a farm in the proper way. These people owned their farms and the college kept account of fifty dairy farmers around Cleveland, keeping the books itself. The average of those farms with the dairy cows was twenty-eight thousand and some odd dollars; I have forgotten exactly what. The income from those farms was a little bit less than five per cent, and the man and his family on the farm worked for nothing. There was not a single allowance for labor. Over in the northwestern part there were fifty other farms kept, general farmers without cows, and their investment was thirty-eight thousand and some odd dollars—this is from memory; you can get the information from the Ohio State University, if you want to. The income from this other group of farms was less than one per cent, and the average farmer and his family got nothing for their labor except what they ate off the farm. This is quite a different tale.

MR. LINK: I hate to speak twice, but speaking upon Mr. Vandenberg's proposition; that is the exception. I personally have had the good fortune to have bought a ranch a few years ago for \$7500 that I was fortunate enough to sell last spring for \$16,000. That was simply luck in selling out at the right time. I have a personal friend who made a lot of money like Mr. Vandenberg has made, to the extent of \$200,000 since the war boom came on. He was so optimistic about the lands in eastern Colorado that he invested back a considerable part of that money at high prices, thinking they were going to continue. The fact is that that good man, and he is a splendid man, is having the fight of his life to keep from bankruptcy, and he cannot today pay his income tax for last year, or he hasn't enough to get it from the bank.

ROBERT MURRAY HAIG of Columbia: Mr. Chairman, I rather imagine that the explanation of Professor Ely's chart with respect to the item of corporation taxes is that it is drawn from the fed-

eral returns, which are very slow in computation. I think that we have all been tremendously impressed by the presentation of the case as Professor Ely has made it tonight, and we shall all carry away with us a very deep impression of how necessary it will be, in formulating our policy with regard to the taxation of land in the years that lie immediately ahead, that the whole matter be based upon a very careful study of the situation. Now, there are misapprehensions, as shown by the discussion going back and forth here the last half-hour; they are misapprehensions that have shown whenever you dip into this situation. It happens that I am connected with a little committee in New York, one of the most peculiarly constituted committees I know of. We have a very radical single-taxer, two moderate single-taxers, a very conservative real estate man, a college professor or two and several others. They all became rather sick of misconceptions of one sort and another and got together to make some statistical investigations of what actually happens in the growth of land values in various sections. They made a fair start, and one of Dr. Ely's items is drawn from that study. I may say that these figures are not yet published, but we have gotten some very interesting results. We found in one of the boom sections of the town—it happened to be up in the St. Nicholas section of Manhattan, which has tremendously developed as a result of subway building—that a set of eighteen city blocks could have been bought in the year 1830 for a certain sum, but that the person who might have bought it at that sum would have made a very poor buy, due to the fact that merely considering the series of taxes that actually had been paid, at a very low interest rate, without taking into account at all the interest on his original investment, he would not be able today to get out whole on the proposition. I think the temptation to buy land is something insidious. In the cities it does not have the appeal that it does in the farm sections. I merely mention this by way of illustration, to make my point that there is a tremendous lot of misconception about the whole situation. Now, on the tax side, I suppose that we all agree that there is something at least in the theory of capitalization and that people who buy land are more or less freed of the burden which is recognized and expected as the usual charge against the land in a given time. I realize that that can be carried too far, but on the other hand, with all other property slipping away, under the general property system, we have had a situation which has given this capitalization process a chance to work out to a certain extent. The determination of how much land should bear in the period that lies ahead is going to be a very delicate matter and should rest on the most thorough study, carried on from a particular point of view which will take into account a lot of subjects of general policy. I think that we can congratulate our-

selves that Professor Ely has decided to dedicate the rest of his life to the study of this problem.

MR. VAN ALSTINE: There is one suggestion I want to make with reference to the profits on the farm, and that is that the inference seems to be that every farmer ought to succeed. We know that statistics show that about ninety or ninety-five per cent of people who venture into business fail and about four or five per cent succeed. I have lived in Iowa all my life and have seen that country develop; seen the land increase from four or five dollars an acre to four or five hundred. The four or five hundred is too high for any reasonable return. I doubt if anybody is making money under present conditions, but I do believe that a large percentage of farmers who have purchased their land at prices ranging from a few dollars to two hundred dollars have made good out of that land. These examples that have been given of making a profit on the purchase and sale of land to me would not be pertinent to this question. It should be the earning value of that land, and the wealthy people of our community are the farmers who have bought that land at the current price, whatever that was, and have settled down on it, and have given it the same careful attention that a business man would have to give to his business if he made a success; and they have made a success of it. The hired man of yesterday has been the tenant of today, and the owner of tomorrow time after time, and I believe that the percentage of farmers who are a real success and have made money out of land will average way ahead of the mercantile ventures, so far as my observation has gone.

MR. MCKENZIE: I should like to make one remark in reference to that: It seems to me the answer to that question lies in the average net income of the farmer as shown by the department of agriculture. From those figures we know that it is less than five hundred dollars.

MR. VAN ALSTINE: I did not get that.

MR. MCKENZIE: I say, the answer to the suggestion that the farmer is making good and making money out of his farm is that the average income of the farmer in the United States is less than five hundred dollars, according to the Department of Agriculture.

CHAIRMAN LORD: The Secretary has a resolution which has to be read in order to place it before the conference, and I think we must give way on this discussion and listen to this resolution, looking forward to adjournment.

SECRETARY HOLCOMB: The gentlemen who have been studying

all day the subject of inheritance taxation have handed in a resolution representing their opinion of what should go to the resolutions committee:

"Whereas, the federal estate tax is not a tax that lends itself to proper collection by one central bureau, in a country as large as the United States, that with local values and local conditions of inheritances varying as widely as they do in all the forty-eight states it has proved impossible for the internal revenue department, even after five years' experience, to equitably and promptly assess and collect the one hundred million dollars raised by this tax; that injustices occurring in the enforcement of this tax have embittered those who have paid the tax, and great delays in settlement have not only worked a hardship on those who have paid the tax but have been a real and vital loss to the business of the community; that since this tax was levied to meet an emergency, and that emergency has now passed, we believe that the federal government should at once withdraw from this field of taxation, that the federal estate tax can only be collected in conjunction with the probate or state courts, and is in direct conflict with state inheritance taxes, and it is also evident that state inheritance taxes cannot be efficiently assessed and collected until the federal taxes have been remitted, and that it is therefore imperative for the welfare of the whole country that the federal estate tax should at once be repealed."

I have one other short resolution:

"Resolved, that this conference asks the legislature of each state in the United States to consider the present intolerable situation in inheritance taxation in the United States and as a first step in the right direction to seek the abolition of the federal estate tax the conference suggests that if each legislature should memorialize Congress along the lines of the resolution passed by this conference and sent to the Congress, it would be possible to secure a repeal of this tax and leave the way clear for more efficient state taxation of inheritances. A copy of these resolutions and those sent to Congress shall be sent to each of the forty-eight legislatures."

MR. W. B. BELKNAP: I did not know that this would come up before the whole body right at this time.

CHAIRMAN LORD: Pardon me. These resolutions of course will be referred to the Committee on Resolutions, and whenever the report of that committee is made available this will be open to discussion at that time.

[Adjournment of Session.]

## SEVENTH SESSION

THURSDAY MORNING, SEPTEMBER 15, 1921

CHAIRMAN BLISS: Gentlemen, please come to order. I will ask one of our old friends, Mr. Andrews, to preside.

CHARLES A. ANDREWS, of Massachusetts, presiding.

THE CHAIRMAN: The National Tax Association in the main has conducted its activities for twelve or thirteen years in the field of state and local taxation, and very largely the annual conferences have been given over to the consideration of matters relating to state and local taxation; but it was inevitable, as the requirements of federal income have increased and as the federal government has been reaching out for new sources of revenue, that we should find that the question of federal revenue so closely related to questions of state and local taxation that the National Tax Association and its annual conferences could not keep away from some consideration of federal revenue questions. I think it must be a matter of a good deal of satisfaction to members of the National Tax Association and to attendants upon these conferences to reflect that men affiliated with us, whom, in a sense, we have produced in the field of taxation, have taken a conspicuous part, during the last four or five years, in the whole question of the framing and the administration and interpretation of federal revenue laws, so that it is very fitting that at least one session of the annual tax conference shall devote its attention to questions of federal taxation, despite the fact that our particular field, in which most of our emphasis will always have to be, is the field of state and local taxation.

The program this morning will be slightly different, owing to absences, from that which is printed and before you. We shall give our attention in the first instance to the Revenue Act of 1921. The first speaker on the program is a man who does not need any introduction but merely presentation—Mr. J. F. Zoller of the General Electric Company.

J. F. ZOLLER of New York: Mr. Chairman and gentlemen of the conference: We are to have, I think, a 1921 federal tax bill. We have had a 1918 act, a 1917 act, a 1913 act and even an act back in 1909. We will now have an act of 1921. This act will be of



particular interest and importance to business throughout the country, because we are now passing into the reconstruction period, which is a difficult proposition. As a matter of fact, I believe it is more difficult to reconstruct a country after a war than it is to win a war, because during a war you get the services, without pay, of all the patriotic citizens of a nation, but after war you get back to peace time conditions and you have to show everybody that a thing is right before you get their approval, and they then hesitate before they take any chances on any proposition.

Now, in proceeding to a discussion of this bill, I think we ought to try, if we can, to put ourselves in the position of a legislator in Congress, whose duty it is to raise enough revenue to meet the requirements of the government, and at the same time relieve business from unnecessary burden to the fullest extent possible. The problem, roughly speaking, is to raise about four billions of revenue. That is a great deal of money for this country, considering what it has had to raise in peace times in the past. Whatever anyone may think and whatever criticism one might like to make, Congress has been making an earnest effort to do what it could to raise this revenue without placing any unnecessary or undue burdens upon business at this time. This subject has been pretty well exhausted. I don't know that there was ever a time in the history of the United States when so many people studied taxation as was done prior to the inception of the 1921 bill. I don't believe that any man or any group of men have been refused a full and adequate hearing before Congress in regard to this bill. I don't believe there was ever a time when our experts and economists have given more earnest attention to a tax bill than they have given or are giving to this particular bill now; and while some of the provisions in the bill may not be what you think they ought to be, an earnest attempt is being made right now to relieve business. I call your attention to the fact that since I prepared this article which I shall not read, the finance committee of the senate has taken up the question of repealing the capital stock tax; that is a very important tax to business. The importance of that cannot be overestimated, in my opinion. It is a troublesome tax; in many cases it is an inequitable tax; in many cases it is a tax upon several other taxes; in many cases it is a tax levied where there is no ability to pay at all. I always thought the tax was fundamentally wrong, anyway, because to my mind it was in the nature of a tax upon the privilege of being a corporation. The federal government never granted any such privilege. I never thought it was sound from an economic standpoint for the federal government to undertake to tax a privilege which it did not create. We get into all kinds of trouble when the federal government steps in and puts a tax on the mere right or franchise to be a corporation. Yet that

was done during the stress of war and because of the great need of revenue from every possible source. Now, that tax is being taken off and that is accomplishing a great deal for business.

Taking that tax off, means that you must secure revenue from some other source. Business will have to pay something in order to get the capital stock tax repealed.

Congress has been beset with all kinds of difficulties, because you know, as a class, business men do not consider taxes in the same way as an organization of this kind; it is pretty hard to get a business man to agree to a tax anyhow, but if he finally does agree to it he is not enthusiastic about it at all. While business generally throughout the country has advocated repeal of certain taxes, very few business organizations have had any definite tax in mind to take the place of the tax they wanted to repeal, that would insure sufficient revenue to maintain the government. So the senate finance committee, as I understand it, has now voted to repeal the capital stock tax, and to increase the normal tax on corporations, beginning with the year 1922, from twelve and one-half per cent to fifteen per cent. Perhaps this extra two and one-half per cent is too much to pay for the repeal of the capital stock tax. I don't know that I can discuss that because it would not be too much in some cases but it might be too much in other cases. The important thing, I think, is to get the capital stock tax repealed.

In taking up this bill I can only hit the high spots. I want to call your attention to some things in it which I think remedy conditions that have been inimical to business.

In the first place, there is a new provision in regard to the foreign trader or foreign trade corporation. The bill provides that if an individual or corporation receives eighty per cent of its income from sources outside of the United States, and fifty per cent of its gross income arises from business done outside of the United States, the corporation or individual trader shall be taxed as a foreign trader or foreign trade corporation, which means that it will only be taxed upon income derived from sources in this country. We have had great difficulty in the past in avoiding double taxation or taxation by both this country and foreign jurisdictions.

We have under the present law, you know, a right to offset against our taxes in this country, the taxes we pay abroad upon business there, upon the theory that we tax the entire income here whether derived from sources in this country or from sources abroad. That does not work out satisfactorily unless the rate of tax happens to be the same in both jurisdictions. But, here is an attempt to encourage the doing of business abroad and to assure business that it will not be taxed here upon the business done outside this jurisdiction. The next thing in the bill is of course to incorporate in it the decision of the United States Supreme Court that stock dividends are not income.

After December 31st, 1921, personal service corporations will be taxable the same as any other corporation. You recall the provision concerning the taxation of personal service corporations. It is very doubtful, under the decision in the McCumber case, if we can now tax a personal service corporation as we tax a partnership. Certain it is that if stock issued to a stockholder in payment of a dividend does not represent income, it is very difficult to say that we can tax a stockholder upon his distributive share—upon his right to a distributive share of the income—when he does not receive even the stock dividend, as is done in taxing stockholders in personal service corporations.

Now, another innovation in the present act is the attempt to close up a hole, to prevent a certain evasion in regard to gifts. The question of gifts has been troublesome in connection with all income taxation. This bill provides that after December 31st, 1920 if a taxpayer makes a gift to some one else and the donee sells the property so given him, the measure of the profit or taxable income will not be the difference between the market value of the gift at the date it was received by the donee; it will be the difference between its cost to the donor and the price at which it was sold by the donee. You know very well that it has been the practice in some cases, when securities had been purchased at a low price and had materially advanced in value, and the individual did not desire to pay a tax on the profit in the event of subsequent sale, for the taxpayer to give those securities to his wife, or his son, or his daughter. Then the wife would not be taxed because of the gift, and if she disposed of those securities and converted them into cash the day that she received them as a gift, she would not be taxed at all, because her profit was measured by the difference between the market value on the day she received them and what she received for them as a result of the sale. The profit, being the difference between that market value and the selling price, there could be no taxable income. She could sell those securities and convert them into cash. There had been realized income in the family, but it was not taxable income under the law. Now, I suppose the wife—and there is a suspicion that this has already happened—if she were a good wife, might also make a gift to her husband, and that gift might be the cash that she received for those securities. So, in that case it was possible for the husband to dispose of the stock and pay no tax upon the profit. Some husbands say that is not true because the wife never gives up any property that she gets. However, there is an attempt in this law to close that avenue of escape from the payment of a tax upon actual profits.

The next provision in the law which I have here to consider is the question of determining the gain or loss from sale of property.

There is no difficulty, of course, in determining the gain or loss upon the sale of property where it has been acquired after the inception of the income tax law. Then, the profit is the difference between the cost and the selling price; but where the property was acquired prior to March 1st, 1913, the date when the income tax law went into effect, the question of the market value on that date arises, and you know that there have been several changes in the law and in the regulations concerning the ascertainment of the profit in cases of that kind. Originally the law provided that if property acquired before March 1, 1913, were sold, the market value on that date should be used to determine whether or not there was a taxable gain, or whether or not there was a deductible loss. That meant that if a person purchased securities for a thousand dollars prior to March 1st, 1913, and those securities on March 1st, 1913 had a different value, and then they were sold subsequent to that date, it was possible to tax the individual on the theoretical gain, although there might, as a matter of fact, have been an absolute loss. He might have sold the property for more than it was worth on March 1st, 1913, but less than it cost prior to that date. And so there was an agreed case. The Brewster case was practically a friendly action, the government desiring to determine what rights it had in determining gains in connection with the disposition of property acquired before the inception of the law.

The language is complicated, but it simply means this, that you must first determine whether or not a fellow actually made a loss or a profit, and you determine that, not by taking the March 1st, 1913 value into consideration at all; you determine that by taking the cost, whether it was subsequent to March 1st, 1913, or prior to that date, and you compare the cost regardless of when the purchase was made, with the selling price, and you thus determine whether or not the transaction shows a profit or a loss. That is logical. But the question arises as to whether that profit accrued since March 1st, 1913, or prior thereto. It is a taxable profit, if it accrued or arose after March 1, 1913, but if it accrued before that date, even though there be a profit, it is not taxable. So under the bill we still have to consider the March 1st, 1913 date, but only for the purpose of determining whether the gain is a taxable gain or the loss a deductible loss. If on March 1st, 1913, the value of the property was such that it shows that the total profit took place after that date, then the total profit is taxable. If the value on March 1st, 1913, was such that it shows that the total loss occurred or took place after March 1st, 1913, then the total loss is deductible. And so we use March 1st, 1913, not to determine the profit or loss any more, but for the purpose of determining what part of the profit or what part of the loss is to be considered in connection with ascertaining the taxable income under the law.

I come now to a very important provision in the 1921 act, which is entirely different from the present law, and I think, an important attempt upon the part of Congress to relieve business and at the same time produce revenue. This provision is in regard to the exchange of property.

I believe that the majority of the thinking people of this country believe in the equities of an income tax. I believe that a tax that exempts a fellow that made no profit is a most equitable tax. These same people do object to paying taxes upon fictitious profits; upon paper profits; upon things that constitute a profit in theory only, because a man does not like to pay a tax upon a profit unless the profit produces something with which he can pay the tax. Now, under the present law it was possible to have a theoretical profit, where there was nothing with which to pay the tax, unless you disposed of the capital and paid the tax out of the capital instead of out of the income. That situation was especially true in respect to the exchange of property. Very often people trade properties. Under the present law I might have a piece of property of some kind. It might have no market value. I might trade that for another piece of property of the same value, that had no ascertainable market value. If I made that exchange and the government could prove that the value of the property which I received exceeded the cost of the property which I exchanged, although I got no money, I should have to pay a tax upon the theoretical profit. Now, under the new bill it is provided that there shall be no tax at all in any cases of this kind unless the property received has a "readily realizable market value." Those are the words, "readily realizable market value." That is the first thing. But even then there is to be no taxable profit, where the properties exchanged are of like kind and have been held for investment. If I have a certain plant which is not quite suitable to my needs and you have a plant that is more suitable to my needs and you want my plant, we can trade plants, because it is property held for investment and for like use; we can trade plants without having to pay a tax. That is a good thing from a business point of view, it is advantageous for us to exchange our properties if I can make better use of your property than you can, and you can make better use of my property than I can. There is no good reason for taxing anyone upon a fictitious profit. There certainly is no real profit realized in this transaction, neither of us gets any money with which we could pay the tax if it were imposed, as a result of the exchange. Under the new bill there will be no tax in such cases.

The bill also provides that in the case of the reorganization, consolidation or merger of a corporation, and securities are exchanged, there will be no tax. That relief is a very vital thing from a busi-

ness point of view, because business must do that sort of thing all the time. Here are corporations A, B and C, all struggling to do business and to make profits. Neither of them have succeeded. It is believed that if they were consolidated or put together they could be operated at a profit. If there is to be a tax upon the mere putting together of these three corporations, they won't be put together, because the stockholders won't pay the tax. They do not realize anything out of which to pay the tax. Under the present law there seems to be a desire to tax everything which looks like a profit, whether there is a profit or not. The result was that during the war the hands of financiers and the hands of business men were tied. Now business certainly ought to go forward. The stockholders in this case have simply changed one piece of paper for another. There should be no tax, and there won't be if this bill is adopted.

The bill further provides that where property is transferred to a corporation for stock there will be no tax. Under the present law if I have some property and a business, I cannot incorporate that business without paying a tax as a result of the mere incorporation of that business, in some cases. For instance, if I have some land that I bought in at a bargain, which I am using as an individual, and I see a great opportunity, by becoming a corporation, of doing more business than I have done before and of making greater profits than I have made. If I organize a corporation and transfer that land to it and take mere paper—I want a stock certificate, instead of a deed, to represent my interest in the same land—I can be required to pay a tax, if it can be proven that the value of the stock certificate is greater than the cost to me of the land, although nobody is involved except myself. The result is, I do not incorporate. I refuse to sell the land to myself and pay a tax on the sale, upon the theory that I have made a profit through dealing with myself. Now, this bill provides that in such cases there will be no tax unless I sell that stock and realize a profit upon the sale of it.

THE CHAIRMAN: Your time has expired, Mr. Zoller.

MR. LINK of Colorado: I move you, in the case of this important subject, that Mr. Zoller's time be extended. It is the first time that we have broken over, but I feel the importance of the subject warrants making the exception.

[Motion seconded and adopted.]

THE CHAIRMAN: The chair will award ten minutes more.

MR. ZOLLER (continuing): I wanted to get before you the importance of the matter of the exchange of property which was developed here the other evening.

We now come to net losses. The present bill provides that if after December 31st, 1921, a corporation or taxpayer makes a net loss he may deduct it from the income of the next year, and if the income of the next year is not sufficient he may deduct the balance from the next, or what would be the second succeeding year. He cannot go further than that. Now, there is a gap between this law and the present law. Under the present law we can only take into consideration net losses in the year 1919—I mean net losses for 1918 can be deducted out of income for the year 1919, but we stopped there. This law begins with 1921, so net losses arising in 1920, as I understand it, cannot be deducted; there is a gap of one year between this bill and the present law.

There is another important innovation in this bill and that is with regard to capital gain or capital loss. This provision only affects taxpayers whose income exceeds twenty-nine thousand dollars. As to those taxpayers, if a part of their income results from the sale of capital assets, it is not added to the other income and taxed at the normal and surtax rates. It is taxed separately. The taxpayer's income from other sources is first determined and he is taxed on that at whatever the rates may be. Then his gain on the sale of capital assets—stocks, bonds, land, buildings, things that constitute capital assets—is determined and that income is taxed at the rate of twelve and one-half per cent. If he suffers a loss, however, in the sale of his capital assets, then twelve and one-half per cent of that loss is deducted from his other tax, the tax upon his ordinary income. So, the situation is this: In case there has been a sale of capital assets, you determine the income as if there had been no such sale; you then increase the tax upon that income by twelve and one-half per cent of the profit on the sale of the capital assets, or you reduce it by twelve and one-half per cent of the loss on the sale of the capital assets, as the case may be. That provision was made to help business. There are a number of people holding stocks, and business would go ahead faster if we could get these stocks out of their hands and into the hands of somebody else; somebody more enterprising, perhaps. But they did not want to sell and pay taxes at the high surtax rates. We could not get the stock transferred to others. All kinds of schemes were devised to avoid the taxes. Stock was sold in instalments and there were other schemes to avoid the higher surtaxes.

The maximum surtax rates in the bill of 1921 are thirty-two per cent. That only helps individuals whose incomes exceed sixty-six thousand dollars. In other words, individual taxpayers whose income is sixty-six thousand dollars or less are not benefited at all by this change in the surtax rates. I have a table prepared to show how this affects different taxpayers. Another matter is the taxation of the proceeds from life insurance policies. Under the pres-

ent law they are taxable if paid to a corporation but not if paid to an individual. Under the 1921 act they do not constitute taxable income in any event.

There is another important provision intended to close up another avenue of evasion. That is in regard to the sale of securities. It has been notorious—and I am not taking one side or the other—that wherever an individual held securities that had gone down in value and he did not want to part with them—he felt they were a good investment—he would sell them, take his loss, and buy them back the same day or about the same day. The result was, he had a loss for income tax purposes, and he had the securities too. Congress has tried to prevent that sort of thing in this act. It has provided, under losses in connection with the sale of securities, that if at or about the same time of the sale, the securities are repurchased, there shall be no deductible loss. I don't know whether that is right or not, but it has resulted in the past in great losses being taken and at the same time it has been possible for the taxpayer to keep the securities in respect to which he claimed the loss. Some wealthy men in my locality, I understand, paid no income tax at all for 1920. They were able to sell enough securities that had gone down in value to wipe out their income. They paid no tax but they may have had the same securities at the end of the year. Of course they may equalize the situation some time in the future because they bought those securities back at the lower price; and if in the future the securities go up in value and they part with them, the government will get a tax, if this law continues, upon the difference between the low value at which they bought them back and the price at which they sell them in the future. This is important because it lays the foundation for something in the future.

There is a provision in this act, and this is an innovation, absolutely, that with the consent of all the stockholders you may tax the stockholders the same as partnerships, and you know you tax partnerships as if all the income had been distributed, whether it has been distributed or not. You can tax the stockholders the same as you tax partners, instead of taxing the corporation. If that could be done with every corporation—if it could be—it would avoid double taxation, because you would not tax both the corporation and the stockholders. You should tax one or the other, but you should not tax both, in respect to the same income. Here is the starting point of an effort to avoid double taxation of corporations, that is, taxing income to both the corporation and the stockholders. Here, with the consent of all the stockholders, you may tax them, whether the income is distributed or not, and put no tax whatever on the corporation. There are a number of other points, but I realize that you have so much to do, and only a certain



length of time in which to do it, that I will close abruptly my remarks, and thank you for your attention. If I can answer any questions I shall be glad to do so.

THE CHAIRMAN: It isn't that we are not willing to profit by the remarks of Judge Zoller, but it is that we have to be fair to the others who are on the program this morning, to whom we are indebted, as will appear as they go on.

We all know about George E. Holmes of the New York Bar, and his connection with and work in the field of taxation during the last good many years. He is with us this morning, as he has been before, and I am very glad to recognize Mr. Holmes.

MR. GEORGE E. HOLMES of New York: At the meeting of the association in 1919 the committee on federal taxes made a report embodying recommendations to be considered by Congress in the next amendment of the revenue bill. The committee stated in that report that almost all the recommendations made by the committee in 1915 had been carried into the 1916 Revenue Act or into subsequent acts, and the secretary has asked me to state how many of the recommendations made by that committee in 1919 are in the present Revenue Bill, at the stage to which it has now progressed. The Revenue Bill, which will become the Revenue Act of 1921, has passed the House and is now before the Senate, which body is making extensive amendments. A casual examination of the bill as it now stands and the report of the National Tax Association committee on federal taxation in 1919, indicates that the report of that committee has been carefully considered by the drafters of the present bill. The 1919 report is so exhaustive and covers so many points, either as positive recommendations or as tentative suggestions, that an accurate comparison with the law cannot be made in the short space of time given me for that purpose. But apparently a large number of the recommendations, and in fact practically all the principal recommendations, of that committee are embodied in the present bill.

The committee made a strong recommendation for simplification of the law. The present bill is not a simple measure, but it contains a provision for a tax simplification board.

The committee made its usual annual recommendation as to tax-free covenant bonds. That recommendation worked with reverse English and the tax-free covenant bonds are now proposed, by the bill in its present form, to be made to operate in favor of corporation bondholders as well as individual bondholders by extending the withholding provision to corporations.\*

\* This extension of the withholding provision to cover corporation bondholders was stricken out by the Senate and does not appear in the final bill.

Tax-exempt bonds, that is, state and municipal bonds, are still exempt from taxation. A movement is on foot to amend the Constitution, to provide for the taxation of such bonds, and I believe Congressman McFadden will address the meeting on that point. The Ways and Means Committee has given consideration to recommendations of the National Tax Association committee with respect to income from sales of capital assets and has followed them in principle. To a less extent the recommendations as to interest and reserves, reserves for bad debts, net losses, recommendations as to non-residents and aliens, non-resident corporations and partnerships, life insurance premiums, insurance companies, have all been followed by the Ways and Means Committee. The standing recommendation of the association, that returns should be made by individuals having a gross income of one thousand dollars has not been followed in the House Bill. The recommendation that regional boards of review should be appointed has not been adopted.

In view of the limitation of time I shall not undertake to discuss the revenue bill at length, but will merely call attention to two or three points that I believe should be considered by this association in connection with the proposed law. The bill now before the senate repeals the excess profits tax unconditionally. We recall that the act of 1918 had an excess profits tax and a war profits tax, the latter at an eighty per cent rate, which remained in effect for 1919 and subsequent years, with respect to corporations or individuals deriving profit from government contracts, that is, contracts entered into with the United States government during the period in which we were at war. This unconditional repeal of the excess profits tax will, it seems, enable those taxpayers who have not yet satisfied their claims against the war and navy departments, to receive money from those departments without being subject to the eighty per cent tax which all other taxpayers in similar position have heretofore paid. It would seem that the excess profits tax or the war profits tax of 1918 should remain in force indefinitely for the purpose of taking care of that class of taxpayers.

Another point I want to mention this morning is the collection of back taxes and the need of adequate provision therefor in the revenue bill. The treasury department has found it impossible to settle all taxes for the year 1917. Up to the present time very little work has been done on taxes for the year 1918. In 1917, 1918 and 1919, large sums of money were made by taxpayers, corporate and individual. In 1920, 1921 and perhaps 1922, large sums of money will be lost by the very same taxpayers.

Under our system of taxation the taxpayer is supposed to pay a tax on the profits of one year, without regard to the losses that

may be sustained in the future, and in general that is a very necessary provision. Of course it is modified by the net loss provision in some degree. The treasury department has still before it the very difficult task of collecting many hundreds of millions of dollars of additional taxes for 1918. That work is not proceeding as rapidly or as satisfactorily as might be desired. The commissioner of internal revenue is confronted with very considerable difficulties. He finds it almost impossible to employ enough men of adequate ability, at the meager salaries allowed by Congress. When men within the department have become efficient, have gained a knowledge of the subject with which they are dealing, they often find better positions outside of the department. Something should be done to remedy this situation and to expedite the settlement of 1918 cases. I believe that a special board of eight, or ten, or twelve, or as many men as might be necessary, could very properly be provided for, to give particular attention to the settlement of past taxes, leaving the department free to deal with current taxes and take care of current work. But the reaching of a proper assessment for past years, for years of the war period, is only a small part of the final winding up of war taxation. After the assessment has been made it becomes necessary to collect the tax; and those who made tremendous sums of money during the war period have very largely sustained tremendous losses since that period. When an assessment for additional taxes is now made the government may find the taxpayer in a position where he cannot pay, or at least cannot pay on short notice. There will be imminent danger of putting many a corporation into bankruptcy or insolvency by insisting upon the payment of large sums of additional taxes for 1918 and 1919 on ten-day notice from the collector. In this respect the commissioner should be given reasonable authority to extend the time of payment of additional taxes, to permit their payment on the installment basis, to be as lenient as possible to the taxpayers, and not be compelled to adopt subterfuges; to do indirectly that which the statute should authorize him to do directly, that is, give the taxpayer adequate notice of the amount of the additional tax and adequate time in which to pay. The law should contain express authorization to the commissioner to call for the payment of additional taxes in three, six, nine or twelve months, as might be necessary in order to give the taxpayer adequate time to prepare for the payment of sums which are now considerably more difficult to raise than during the war period.

THE CHAIRMAN: The secretary has some announcement to make.

SECRETARY HOLCOMB: I thought I ought to refer to the absences. Dr. Adams and I had an energetic correspondence this sum-

mer and I hoped to get him here, but he says it is practically certain that he will not be able to attend the conference.

Mr. Walker is now of course engaged in connection with this new bill. He writes a letter. He had intended to come and had made the necessary arrangements. He writes enclosing a copy of the committee print, showing the proposed changes up to date, which is September 10th.

I should add that I received a communication from commissioner of internal revenue David H. Blair, indicating his interest in this conference and his purpose to have a representative attend, in his absence. Doubtless he intended to send Dr. Adams or Mr. Walker, but neither of them could be spared from Washington at this time.

THE CHAIRMAN: In the spring of 1920 it was my good fortune in certain tax work to be associated with a man who, up to that time, was a stranger to me, and I found that H. C. McKenzie, Director of Research and Taxes of the American Farm Bureau Federation, brought to the subject of federal tax discussion a point of view of which we cannot be negligent, and a very conscientious desire to solve the problem in terms of well-being for the whole country; all of which was most helpful to the discussions I had with him. Mr. McKenzie is here; I think it is his first national tax conference; I am very glad to present to you Mr. McKenzie.

MR. H. C. MCKENZIE: Gentlemen of the Tax Association: When the farmers began to study the question of taxes they were at sea without either chart or compass, as it was a subject to which they had given practically no attention, and it was but a little while until we found that if we were to study the question with any profit, we needed a compass and a chart by which to steer, and little by little we threshed out four principles, which have been guiding our efforts in this tax matter so far. The first of those was that a man's net income is the measure of his ability to pay taxes for the support of the national government. There is not much dispute about that. I think we can only get our taxes from two sources, either out of our net income or out of our capital, and there isn't very much disposition in America to lay a tax on capital assets. Germany does that, but she is almost alone.

The second principle was that the rate should be progressive; that is, the bigger the income the higher the rate. That principle has come down to us, I believe, from China, where it has been in vogue for several thousand years and has stood the test.

The third one is this: as this is the country of all the people, everybody should have a part in paying the taxes, and therefore a certain part of the taxes can justly be raised by the tariff and

other consumption taxes—the only question would be the proportion to be secured from these two sources.

Principle four, which is probably the most fundamental of all, is this; that while we recognize that the first consideration in any tax measure is the raising of revenue, its collateral effects must not be lost sight of, and, in so far as it is possible, the taxes should be so levied and collected as to tend to the distribution of wealth among the many and not to its concentration in the hands of the few.

Now, I think that if those four principles are religiously applied to the revision of our tax system, Congress will not go very far astray. To my mind the only danger is that they may assent, in a measure, to the principles, but when it comes to their application they are not likely, in my judgment, to follow them very closely.

There are only two chief ways in which we can get revenue, either from taxes on income or from taxes on consumption, and the great struggle, as most of you know, is through which of these ways the bulk of our taxes shall be raised.

It has been customary to raise practically all our revenue through consumption taxes. We had the government supported by the tariff and a tax on tobacco and alcoholic liquors, that produced about enough money to run the government. It did not take much in those days. You can all remember when a great cry went up from the country because one Congress spent one billion dollars. That was five hundred million dollars a year, a billion dollars in two years. Now, it is a far cry from the billion dollar Congress down to the tax budget of the present day, where we have to have approximately ten times that much money to keep our government going. In the old days the tax was but about five dollars per capita. Now it is fifty dollars, or two hundred and fifty dollars for the average family. Now, when our national tax gets to that point, where we have to have, on the average, two hundred and fifty dollars out of every family in the United States, we have got to the place where it is necessary that the levying of a tax should be done with reference to social justice. Those of you who read Mr. Hughes' note to the allies and to China, on the disarmament conference, know that in that note he emphasized the question of social justice; and we believe that we should not only emphasize the matter of social justice in our foreign relations, but that we should emphasize the same thing in our domestic tax bill.

The three great points in the present tax measure that demand special attention are the proposed repeal of the excess profits tax, the lowering of the surtaxes on individuals, and the amount of revenue which the bill proposes to raise, and I will take them up in that order.

There is no question in our minds, I think, but that the revision

of the tax law cannot lessen the burden. It can only redistribute it. The burden can only be lessened by cutting off expenditures, lowering the cost of government. So, this burden of approximately five billion dollars has got to be borne by somebody; no getting away from that. We have danced, now we are going to pay the piper. It is only a matter of how we are going to get the money. Take principle number one, that a man's net income is the measure of his ability to pay taxes; we add to that this thought: that a corporation, being an artificial person, created by the state, and receiving many valuable privileges from it, is therefore a just subject of taxation—there is where I differ from Mr. Zoller. If you take that into consideration you will see that there is a reason for taxing corporations. The taxing of corporations has been done in two ways; first, by a flat tax of ten per cent, and then by the excess profits tax, which they propose to repeal. Now, the excess profits tax did not affect any corporation until it had a net income of two thousand dollars plus eight per cent of its invested capital. After that the excess profits tax began to work. Now they propose, under the law as it came from the ways and means committee, to repeal that excess profits tax and to raise the normal tax from ten to twelve and one-half per cent, or fifteen per cent, as the finance committee of the senate proposed. Here is what that will do to corporations: Corporations with large earnings—the prosperous and the powerful corporations—are practically going to have their taxes cut in two. If you will chart the net earnings and taxes of corporations, you will find that is about what it does, on the average. It cuts the tax of the large corporations in two, but it increases the tax of the little corporation that has small earnings. Instead of paying what it did before, it is going to run it up very materially. So, what it does is to relieve the very prosperous corporations, the very powerful ones, and put the burden on the ones that can least afford it. I submit to you, gentlemen, whether that is a proper system of taxation of corporations in the United States. I don't think so. [Applause.]

I think that is going to tend toward monopoly; tend to crowd out the little fellow and give the big fellow the whole field.

Now, when we come to the question of reduction of the surtaxes on individuals, there is another quite knotty problem involved. The first speaker has already told you that the reduction of those surtaxes won't touch anybody until he has an income of more than sixty-six thousand dollars. As a matter of fact it won't matter very much to anybody until he gets an income of more than one hundred thousand dollars, and the fellow it is going to help, men, is the fellow with the income of three hundred thousand dollars and up. Those are the chaps that will get the most benefit out of this. Here is the fact; most all of you people know that the men

of three hundred thousand dollars income and up, have two-thirds of their money, on the average, in tax-free securities. There are sixteen billions of those tax-free securities in the United States, approximately—as near as anybody can find out. What this law proposes to do is this: On the average, two-thirds of their income is absolutely free from surtaxes, and they are going to cut in two the tax on the other one-third, they are going to cut it in two; they are going to reduce those surtaxes to thirty-two per cent, if you please. Now, where are they going to get the money necessary to run the government? They are going to relieve the prosperous corporations, they are going to relieve the very wealthy individuals. And there is another thing they are probably going to do by this law, for anything that I see in it now. For the purpose of our discussion we may take Mr. Rockefeller for an example, not because we have any grudge against him, but because he illustrates the point. Let us suppose that Mr. Rockefeller, under the new law, would have his surtax reduced to thirty-two per cent, and that he incorporates the Rockefeller home and fire-side, puts it into a corporation, and it goes back, under the new bill in the house, where he will pay twelve and one-half per cent only. What that is going to produce is this, and it is the third very vital feature in this bill; it is going to produce an enormous deficit in our revenue. I don't think there is very much question about that. The most important member of our present government says he will take care of it, but I have serious doubts as to whether he will take care of it or not. Here is the fact; instead of reducing our floating indebtedness of two billions and better, which everybody acknowledges should be done before 1923, we are going to increase our floating indebtedness; and the grandchildren of the present generation will be paying taxes, and interest on the national debt, to the very wealthy men who have the bulk of their money in tax-free securities and are not paying a dollar. That is where you get to eventually in this whole proposition. There are two or three things about which there has been a great deal of discussion; one is the question as to who pays the taxes that we have, and another is, who ought to pay the taxes, to support the government. It isn't worth while, I think, in this audience to discuss the sales tax. I think most of you know that there is nobody on the ways and means committee in favor of such a tax. The president is not in favor of such a tax, so that there isn't any use in discussing that question, because it is simply academic. But, there is a vital necessity, maybe, of discussing another proposition, and that is the tax proposed by Mr. Smoot as a manufacturers' tax. That is, it would be a tax levied on the manufacturer, instead of a general overturn or sales tax. Now, the chief difference between the two is this: that in a general overturn or sales tax, you

tax all transactions, and in a manufacturer's tax you would only levy one tax. But, as to the principle involved, as to where the money comes from, they are both the same; that is, it is going to be a tax on consumption, and it will only produce a fraction of the revenue that a general sales tax would produce, and the only advantage in that proposition over the former one is in the matter of collection. There is no question but that it would be simpler and would avoid many of the troubles in the matter of collection.

In regard to the theory of who pays our present taxes, Senator Smoot is one of the keenest men on the finance committee, in the Senate; he evolved a theory, which if true would avoid most of the troubles, and his theory was that all our domestic taxes, without exception, are eventually passed on to the ultimate consumer, as the law stands now. The trouble with the senator's theory is that it is not true. That is the whole thing. Now, I can prove that in just two or three minutes. In the first place, if you will take our inheritance tax, imagine for a minute who passes on the inheritance tax. Is it the man who died, or is it his heirs? Who is the ultimate consumer? If you ask that question it appears foolish. There is no such thing. Let us take the income tax; that is more important, because it is one of our great revenue-raisers: If the senator's theory were true; that all our present taxes were passed on; why are there sixteen billions of dollars of tax-free securities? Ask yourself that question. There would be absolutely no reason for the existence of tax-free securities. Wealthy men are taking stocks and bonds and things that bring them 12, 15, 16 or 18 per cent, and selling them and putting the money into tax-free securities paying five and five and one-half per cent. Now, if that thing were true, those men ought to be in the lunatic asylum. That would be a proper place for them; or else have a guardian appointed for them. The trouble is, the theory is not true. And then when you come to the excess profits tax, we run against another situation of the same sort. The theory is that the corporations are adding an excess profits tax to the price of their goods and taxing it to the ultimate consumer; they are not only adding the tax, but are putting on something to make themselves safe. So, eventually, as the chief advocate of the sales tax said, they have added twenty-two and three tenths per cent to the high cost of living, and he didn't use that as his own figures but he quoted it as the finding of the department of justice. We sent an expert down to the department of justice to get the figures, to look over them, and we found they never had any figures and never made any investigation.

Now, let us see what the corporation can pass on to the people who consume the goods. There are in this country about two hundred and fifty thousand corporations that make reports to the



United States Government; about one hundred thousand of them do not make any money, so they are out of it; there is another hundred thousand that do not make enough to get into the excess profits class; there are maybe not more than a hundred thousand this year that come in the excess profits class of taxpayers; so that we have two classes of corporations, one of which does not pay the excess profits tax and the other that does. We also do business as individuals and as partnerships; probably one man out of eight pays the excess profits tax. I happen to know a little about the lumber business. Suppose eight of us here are doing a lumber business in New York City, and that I am a corporation and have to pay an excess profits tax and the other seven of you do not have to pay. Now, we all sell our lumber to the same people; I am doing business in competition with the other seven who do not pay the tax; how can I add the excess profits tax to my price and get away with it? That cannot be done.

As a matter of fact, taxes are not a determining factor in fixing prices. That is shown not only by affairs in the United States, by the course of prices, which do not either go up or down with our taxes, and the same thing is shown by the course of prices in other countries. There is no relation at all between the height of prices and the height of taxes. I had a conversation with a gentleman about that a little while ago, and I asked him how he explained the fact, if the theory were true, that prices were no higher in England where taxes were high, than in Scandinavian countries, where taxes were low, and he thought it was because they bought their supplies in the United States. Let us look at that: They all buy their products in the United States. England and Scandinavia can buy at the same price. According to the theory, the English high taxes would be added to the price paid to the United States. Norway and Sweden having low taxes, there would not be so much to add, but the prices were practically the same. England was not able to add her high taxes to her costs. I don't believe there is any answer.

That is pretty nearly all I want to say about that, except one thing: You gentlemen probably noticed that the first speaker put the emphasis—his whole thought—on relieving business. Now, the question in my mind is whether that is the fundamental thing that we want to consider or whether it is not. To my mind, it is not. The relief of business is not the bottom fact that we have to consider. The bottom fact that we ought to consider is that the taxes should be so levied among the people that we shall not do any social injustice. Now, here is where we get to; we can divide all the people in the United States into two classes; those who belong to the income tax class and those whose income is below that level. There were in 1919 something over six million who paid income

taxes, or made returns.. If we take the people who made income tax returns, and their dependents, you get about fifteen million people, and their income was about twenty billions of dollars; and if we add to that the income of corporations, amounting to eight billions nine hundred millions, and then add the income from tax-exempt securities, we shall get for that group of fifteen million people a net income of approximately thirty billions of dollars. Now, if we take those fifteen millions from the total population of the United States, it is going to leave us another group of ninety millions of people, and the net income of those people, so far as anyone can find out, is approximately the same amount, about the same as the other fifteen; that is, thirty billions of dollars. The average of the first class is around two thousand dollars, and for the second class is about three hundred and thirty-three dollars. How much of that average tax budget of fifty dollars a head can you take out of an average income of three hundred and thirty-three dollars?

The whole trend of the present tax discussion is to shift the burden from the man of large income back onto the little fellow with the small income. My judgment is, when you get about twenty-five per cent of the total tax out of that three hundred and thirty-three dollars average income, you are going about as far as you ought to go; and when you undertake to shift seventy-five per cent of the burden on the other ninety million, to relieve the fellow with the big income—you see we get from income and excess profits taxes seventy per cent of our total revenue. This year we will get seventy per cent—as will be done if this tax law goes through as it now is, you are going to turn that thing right over, and you are going to get the bulk of the money out of consumption taxes, and out of taxes on food, fuel, clothing and shelter. That is where you are getting to.

Professor Seligman of Columbia University thought nothing that could happen in this country would stir up such social ferment as to attempt to shift the burden from those able to pay to the shoulders of those who are not able to pay. (Applause.)

THE CHAIRMAN: To clear up one slight misapprehension which I think Mr. McKenzie got from the remarks of Mr. Zoller; the chair did not understand Mr. Zoller to maintain that corporations ought not to pay taxes, and ought not to pay large taxes, but merely that the capital stock tax, which he, Zoller, thought was in effect a tax upon the privilege of being a corporation and doing business as a corporation, was a bad tax for the federal government to assess, since the federal government does not grant the privilege of doing business as a corporation. The chair understood that that is as far as Mr. Zoller went in making any claim that corporations ought not to pay taxes.

MR. MCKENZIE: I think probably you misapprehend what I said; I did not take exception to any particular thing Mr. Zoller said, but what I said was that he put the emphasis on relieving business. That is the point.

THE CHAIRMAN: The fourth and last speaker on the formal part of the program for this morning is Hugh Satterlee of New York, who, we all know, has had a very valuable and informing experience in tax matters, including service in the treasury department—Mr. Satterlee.

HUGH SATTERLEE of New York: Mr. Chairman, ladies and gentlemen: Because this is a free-for-all discussion and interchange of views, I shall make no apology for giving my own point of view. On three of the points or general principles raised by Mr. McKenzie, I am in entire agreement with him, while on the fourth I am in disagreement, but on the application of those principles I am in the most diametrically possible disagreement. As to the first three principles; that net income is the measure of the ability to pay, with qualifications which he himself made, of course is what I think most of us believe; that the rate should be progressive, I also believe; that everybody should have a part in paying taxes, I most heartily subscribe to; in fact, I did not know that Mr. McKenzie believed that. But, as to the utilization of the tax-levying authority of the government for the promotion of what certain people regard as social justice, that principle, if it can be called a principle, I think is utterly wrong. I think taxes should be levied for the support of the government, with as equal and proper and fair a distribution of the burden as possible, and that they should not be levied for the purpose of promoting what a few people, or many people, consider to be social justice; they should not, on the other hand, interfere with social justice, but they should not be levied for that purpose. Taxes should not be in the position of a book that is written for a purpose. They should stick to their own field.

Now, the present federal tax bill has a number of excellent features, and a number of what I consider to be unfortunate features. I shall lay most stress, in the few moments I have, on what I think are the defects of the bill, because it is not necessary to speak of the excellencies, and Mr. Zoller has already given us a very full general explanation of the purport of the bill.

In the first place, it is recognized in the bill that taxes, as Mr. McKenzie said, must be realized from two sources, wealth or incomes, and consumption. As to what the distribution between those two sources should be, there is opportunity for disagreement. Personally, I should think about half and half would be proper. Apparently Mr. McKenzie thinks that at least three-quarters

should be raised from income taxation on the incomes of the very rich, and that only a quarter should be raised on smaller incomes and on consumption taxes. That is a matter of personal opinion. My guiding principle, in the consideration of federal taxes, which has come to be more or less of a conviction with me, is that, all things considered, the federal government should rely for its revenue on two principal sources of taxation. One is the taxation of incomes, and the other is the taxation of consumption, or what is the same thing, a sales tax, or sales taxes. As to whether it should be a general sales tax, in which I personally believe, or a number of miscellaneous sales taxes, there is also a very definite ground for difference of opinion; but by whatever name you call them, they are in substance sales taxes. Now, in the direction of reaching this pet proposition of mine, the bill makes some advance. It is to some extent reducing the proportion of taxes that are levied on income, and I shall not take time to disagree with Mr. McKenzie in his opinion as to the repeal of the excess profits tax and repeal of the higher rates of surtaxes, because I think that is water already gone under the bridges. He stands comparatively alone in that position.

The repeal of the capital stock tax, I think, is an excellent thing if it goes through. That gets one anomalous, irritating, unnecessary tax out of the way. I also very strongly advocate the repeal of the estate tax. I believe with a number of you that inheritance taxation should be left to the states as a proper subject for them. I also think that a number of what might be called regulatory taxes should be either repealed or turned over to the department of justice for administration. I had supposed that it was the intention of Congress at least to turn over the enforcement of the Prohibition Act to the department of justice. That seemed to be the notion earlier in the year, and it still may be done. But along with that, there are other so-called taxes, such as the child labor tax, the narcotics tax, and so forth, that do not properly belong for their administration in the internal revenue bureau. They were not intended to raise money, but simply to prevent, or to regulate the business with which they were concerned.

Then, there are a number of trivial taxes which are not worth collecting, and in that connection the present bill goes part way, but not very far. What I mean, for example, is this: Here are a few printed pages that accompanied Mr. Walker's letter to Mr. Holcomb, which show the estimated revenue from the various taxes to be imposed by this new bill, as amending the Revenue Act of 1918, and among them are the tax on carbonic acid gas, two million dollars; on sporting goods, one million dollars; chewing gum, one million, three hundred thousand dollars; cameras and such articles, eight hundred thousand dollars; candy, six million

dollars; firearms, knives, and so forth, four million dollars; thermos bottles, cigar and cigarette holders, eight hundred thousand dollars,—taxes like that, it seems to me it is perfectly ridiculous for the federal government to impose. They are so trifling in amount that they are not worth the trouble and expense of collection, and they are simply irritating and taking the minds and efforts of the bureau away from more important things.

Now, of course, there are some of these sales taxes that do yield more money, such as the tax on jewelry of twenty-five million dollars, or the sale of produce upon exchanges, seven million six hundred thousand dollars. But it is only by lumping together a number of these miscellaneous taxes that any substantial sum is realized whatever.

So, without going into my reasons for preferring a general sales tax, it should be uniform and should be levied at so low a rate that there would not be the differences in taxes which are exemplified by the mountains rising above this plateau, but more like the level of the sea which, except for the waves, is practically of the same level. I should very strongly urge the substitution for these sales and consumption taxes, whatever you call them, of a general sales tax in some form. My reasons for that belief I have set forth in a number of places, and I won't repeat any of them here.

To sum up the general situation, as this bill presents itself to me: I think it is excellent in providing, as it apparently will, by amendment in the Senate, for the repeal of the capital stock tax; that it is excellent in providing for the repeal of the excess profits tax, although that comes a year later than it should; that it is excellent in going part way in reducing the higher rates of surtax, although they should also be further reduced, because I have no patience with a man who says that because an individual has a very large income, one-half or more of it should be confiscated; and also, the bill, so far as it goes, is excellent in getting rid of some of the nuisance taxes, smaller sales taxes, and so forth, of which there are many; but, that it is bad in continuing the inheritance tax and in still providing for these irritating and piffing sales taxes of small consequence.

As to the specific income tax provisions of the bill, there are a number of points in which it seems to me the bill is very dangerous. I don't know how much time I shall have, but I will take them up one by one as far as I can go.

Incidentally, before I get to that, Mr. McKenzie's statement that the excess profits tax bears heavily on the larger corporations and rather lightly on the smaller corporations is directly contrary to the statement in Mr. Walker's letter, which seems to be supported by these figures he has presented, prepared by the treasury

department experts, and which show that in the case of 2,194 corporations, whose proportionate net income to invested capital was one hundred per cent or over, the average invested capital of those corporations was only sixty-one thousand dollars and the tax was sixty-seven per cent, whereas, going up to the top of the table, with a number of intermediate stages, which I won't stop for here—to cases where the percentage of net income to invested capital was less than five per cent; there were ten thousand such corporations, whose average invested capital was one million, three hundred and nineteen thousand dollars each; and the percentage of income and profits tax to their net income was only ten per cent.

As to the rate on corporations, whether it be twelve and one-half or fifteen per cent, I have the gravest fears as to the consequences. Of course, it is a very difficult matter, as we all know, to impose a rate on corporations to equalize the surtaxes on individuals, or in any way to provide for the comparatively equal taxation of individuals and corporations. But this imposition of a flat rate, say, of fifteen per cent—as that seems to be the rate which will be adopted—as compared with the reduction of the surtax to thirty-two per cent, gives an individual with an income of sixty-six thousand dollars or more a tax of forty per cent, and a corporation with the same amount of income a tax of fifteen per cent. I am sure that you see how it works out. A man in business with a small income may pay an income tax, conceivably as small as four per cent, if his net income is not in excess of four thousand dollars. On the other hand, a corporation, a small corporation—and there are lots of them in the country—that don't make over three or four thousand dollars a year, would pay fifteen per cent. On the other hand, an individual in business who has a net income of sixty-six thousand dollars or over—and of course there are lots of them, individuals and partnerships, which, for various reasons, find it much more convenient and much better for themselves and for the public at large, to do business as individuals than as corporations—must pay a tax on his net income of forty per cent, while the corporation with an income of sixty-six thousand dollars or over only pays fifteen per cent. But, you say, when the income of the corporation is distributed to the individual stockholders, they will pay too. Yes; but on the other hand, a lot of the income of the corporation will be and should be kept in the business, and will be kept in the treasury of the corporation for years, and in the expansion of the corporation may never be distributed, and that will never pay taxes more than at the fifteen per cent rate, while the individual in business, whose business is expanding, who must set aside from year to year a substantial portion of his income, must pay forty per cent on that income.

I don't know of any remedy to suggest that would be absolutely fair and equitable, but I have never lost hope—it cannot be called much more than that—that something can be worked out from the scheme which was originally proposed by Dr. Adams, of taxing the undistributed income of corporations. I have never been convinced that that is certainly impracticable, and I think it is worth studying, as compared with this very rough attempt at equalization, with this fifteen per cent rate on corporations. Now, that is one point.

As to the basis of determining gain or loss, I think the department of justice never did a more stupid thing than when it made the concession in the Goodrich case, that gain in the case of a sale of property held before March 1st, 1913, should be figured at cost, and not on the March 1st, 1913, value, if that value was less than the cost. The theory of the Income Tax Act as I always understood it, but I may be quite wrong—the theory has been, I think, that what a man had at any given time was his capital and that you figured income with reference to a definite point, and so in working out the rulings, and so forth, of the treasury department, I have always viewed them from the point of view that what a man had on March 1st, 1913 was his capital, and that if he has property which, we will say, cost him one hundred thousand dollars, but which on March 1st, 1913 was worth only fifty thousand dollars, his capital on March 1st, 1913 was fifty thousand dollars, and that it was proper for Congress to provide that if at a later date he sold that property, his gain was the excess of the selling price over his capital on March 1st, 1913. Now, unfortunately in my opinion, that question seems to have been concluded against the government by the Supreme Court's acceptance of the concession of the attorney general in the Goodrich case, but I don't think it has been concluded so far as losses are concerned; and I think the provision in the present bill, that the same rule should be applied to losses, so that a man whose loss is considerable, based on the March 1st, 1913 valuation, but less or nothing at all with reference to cost, should not be allowed to deduct the loss on March 1st, 1913 valuation, is a very unfortunate provision and vicious, and I prefer the provision in the model income tax statute presented the other evening.

In connection with that is this provision on the taxation of gain on the sale of capital assets, which was inserted in the bill no doubt with the best of intention, but which seems to me to be loaded with dynamite. So far as a gain is concerned, I do not think it is fair to the government to limit the tax to say a flat twelve and one-half per cent or fifteen per cent, or whatever it is; I think that some method of apportionment should be made so as to tax such gain on the basis of its being distributed over the years since the

property was acquired, and I think a provision like that—in fact, I worked out one or two in my own mind—could be inserted in the bill, which would be as simple as this provision and much more equitable. But however that may be, if under the corresponding provision you are entitled only to deduct twelve and one-half or fifteen per cent of the capital loss, as I said, I think it is a very serious matter, and very inequitable.

Here is one illustration; it is too early now to see what situations may arise, but suppose in 1920 you purchased some stock for one hundred thousand dollars, the value of which was based largely on a large surplus which the corporation had accumulated. Now, after this act comes into effect, say in 1922, the corporation, deciding that it does not need all its surplus in its business, makes a fifty per cent distribution by way of dividend, and distributes to you fifty thousand dollars. That is taxable at the ordinary defined rate. That is subject to surtax, although not to normal tax, and may run up, we will say, as high, with other income, as forty per cent. On the other hand, in the same year, deciding that you no longer want the stock, you sell it. Because of this very substantial distribution, theoretically you could only sell it for fifty thousand dollars, which is the one hundred thousand dollars paid for it less the fifty thousand dollars you received by way of dividend. On that fifty thousand dollars loss, which you have suffered from the sale of the stock, through the sale of the stock for fifty thousand dollars, as compared with your purchase price of one hundred thousand dollars, you are only allowed to deduct twelve and one-half or fifteen per cent. So you are taxed forty per cent on fifty thousand dollars, but allowed an offset of only twelve and one-half or fifteen per cent. That is one illustration of the way the thing may work out. It does not follow at all, it seems to me, that because there should be some limitation on the taxation of capital gains, that there should be a corresponding limitation on the deduction of capital losses. Of course, the chief objection to the taxation of capital gains is the fact that you are taxed at high rates in one year, whereas the gain is really distributed over several years.

I will skip over this bill and just mention one or two things briefly that I think are important. With respect to tax-free covenant bonds, it has always seemed to me entirely illogical and inconsistent that corporations should not be entitled to deduct, as other interest paid, the amounts that they have been required to pay through such covenants on behalf of the bondholders. I cannot see any justification for the continuance of that provision in the present bill, particularly if, as seems to be the case, it is likely that banks will be allowed to deduct taxes on bank stock. paid technically, at any rate, on behalf of their stockholders.



cases are not strictly analogous, but there is no more justification for one, in my opinion, than there is for the other.

There are some trifling — not trifling in results — but comparatively small matters in the bill, where the language of the bill seems to be inadequate. For instance, in the returns of husband and wife, there is no provision in the present bill, as I read it, requiring that the husband and wife must make return if their joint income is two thousand dollars or more. It seems that unless the income of one or the other is at least two thousand dollars, they need make no return.

But the most vicious provision in the bill, as I see it, is the one Mr. Holmes spoke of; that in the case of the reassessment of taxes, thirty days should be given for presenting objections, and then a rather summary disposition of the appeal should be made, and the tax must then be paid without opportunity for filing a claim in abatement. With respect to some of the enormous back taxes that have been reassessed, that would be absolutely a calamity upon the country. I might take from my own experience just a couple of cases I know of. I have in mind two cases of corporations, with which I am connected as attorney, which have been assessed added taxes for 1918 in excess of seven million dollars in each case. In both of those cases I am as convinced as I can be of anything in the world that the major portion of those additional taxes are absolutely erroneous, not the slightest justification for them in law or in equity. As a matter of fact, I have every confidence that in one case, instead of an additional assessment of seven million dollars, the government will make a small refund, and that in the other case the additional assessment will be reduced say to one million dollars, or something like that. But it has taken—and it is not through any delays on the part of the company—but it has taken the treasury department, after issuing its original assessment letter, and even after making the assessment and sending the bill through the collector, over a year to make any progress at all in straightening out those taxes. And if, in those two cases for example, after the original hearing of the appeal, the treasury department should have confirmed its decision as to the seven million dollar assessment and we should not have been able to file any claim in abatement, these corporations would have had to go out of business. Those are only small illustrations of the incalculable harm upon the business of the country that would result from imposing additional taxes and taking summary proceedings for their collection. The remedy, of course, is, as Mr. Holmes says, that in this bill some considerable latitude should be given the commissioner or the commissioner and secretary of the treasury to arrange terms for the payment of these back taxes, upon conditions that should be equitable both to the government and the taxpayer.

THE CHAIRMAN: We have here a telegram from Congressman Mills that he cannot get here, being detained in Washington. He sends some printed remarks. I think neither the secretary nor I have been able to look it over to find whether it is in a form in which Mr. Mills would like to have it incorporated in the proceedings of the conference, but if there is no objection, the Chair will understand that the inclusion of these remarks of Congressman Mills, which he submits in writing, in the proceedings of the conference, be left to the judgment of the officials of the association. Is there any objection to such disposition of the matter?

We have now perhaps twenty minutes. Let me call your attention to the fact that tomorrow morning—not this afternoon, as on the printed program, but tomorrow morning—there will be another session of the conference relating to the Federal Revenue Act, and perhaps then there will be further discussion that may not be covered this morning.

[The paper submitted by Congressman Mills is as follows.—Ed.]

## THE SPENDINGS TAX

OGDEN L. MILLS

Among the many controversial questions involved in the Revenue Bill of 1921, and one giving rise to the greatest amount of discussion, was the reduction of existing surtax rates. There are many who still hold that rates running as high as seventy-three per cent can be successfully imposed, while even those who recognize the impossibility of enforcing such rates hesitate, in view of the fiscal necessities of the government and popular prejudice, to recommend the reduction of surtax rates below thirty-two per cent.

The arguments that can be urged in all fairness against the present high surtaxes on incomes are as follows: Their productivity is steadily decreasing; they discriminate in a wholly unjustifiable manner between corporations and partnerships; and there can be no question but that they are draining into the unproductive channels of government expenditure, or forcing into tax-exempt securities the liquid capital which is absolutely essential to the normal development of the country.

Let us consider the first point: We find that the taxable incomes in excess of \$300,000 reported for taxation fell off from \$950,000,000 in 1916 to \$390,000,000 in 1918. We find that taxable incomes of over \$100,000 reported in 1918 totaled \$990,000,000 for tax purposes and only \$600,000,000 in 1920, while the tax fell off from \$470,000,000 in 1918 to \$270,000,000 in 1920.

Taking them by classes, incomes of from \$150,000 to \$300,000 totaled \$371,000,000 in 1919, as compared with \$505,000,000 in 1916; incomes from \$300,000 up to \$500,000, \$159,000,000, as

compared with \$272,000,000; incomes from \$500,000 to \$1,000,000, \$126,000,000, as compared with \$256,000,000; incomes of \$1,000,000 and over, \$152,000,000 as compared with \$464,000,000.

Bank deposits increased from \$14,430,000,000 in 1914 to over \$25,730,000,000 on March 1, 1920, while the circulating medium increased from \$3,204,000,000 on June 3, 1914, to \$5,846,000,000 on February 1, 1920.

From these figures I think it is fair to assume that the taxable incomes in the above-mentioned classes did not actually decrease, but did decrease for purposes of taxation.

It is hardly necessary to point out the avenue of escape offered by the large volume of tax-exempt securities, but even if by constitutional amendment the tax-exempt privilege is denied to municipal and state securities, it will be impossible in normal times to collect as high a tax as a seventy per cent income tax. The income tax has been a wonderfully successful tax, but prior to the war it is unquestionably true that it depended for its success upon the moderation of its rates. When rates were low the tax was almost uniformly successful; when an attempt was made to impose what in those days were high rates, the tax was a failure. Professor Seligman, describing the situation in Italy, where the rate did not exceed twenty per cent, wrote as follows:

"The tax rates have become so enormous that the administration has broken down under the weight, and the public conscience has given way to an equal extent. The Italian income tax is a signal proof of the folly of the attempt to tax incomes at anything more than a very moderate figure."

In this connection, our own experience with the personal property tax is particularly significant. We all know that at one time or another every state in the Union has attempted to collect the personal property tax on intangible personal property at rates varying from forty to sixty per cent on the yield of the property, and that not one of them has succeeded. All experience would tend to show that an attempt to levy an income tax at these rates in normal times would be no more successful.

In the second place, there is a serious discrimination against partnerships as compared with corporations resulting from these high rates. The corporation pays an excess profits tax; a tax of ten per cent on net income, and the stockholder, of course, pays on the dividends received, but does not pay on undistributed earnings. On the other hand, the partnership pays on all of its earnings, whether distributed or not, and is taxed at rates that run as high as seventy-three per cent. As a result, one partnership in 1918 paid a million and a quarter dollars more than it would have had to pay had it been organized in corporate form. Such a result is, of course, wholly indefensible.

Finally, these high taxes deprive the commercial and industrial enterprises of the United States of the capital necessary for their normal development. Taxes which either drain liquid capital into the unproductive channels of governmental expenditure, or cause it to seek security from excessive imposition in tax-free securities, necessarily result in trade depression, restriction of production, and excessive demands for credit. Taxes must be paid in cash, and that means that, if too large, they absorb the comparatively limited capital in the form of liquid or quickly available assets. This is the very capital essential to a revival of business activity.

The steady employment of labor at remunerative wages depends upon the fluidity of capital. Taxation which drives capital out of enterprise stops the wheels of industry. The burden of such stagnation necessarily bears heaviest upon the lowest paid individual. Our present system has proved beyond contention the fallacy of legislation enacted on the theory of taxation of the rich alone, and has demonstrated that, in practice, such a theory tends to freeze capital, and thereby to drive labor out of employment. If capital is once more to become free to perform its essential functions, the present surtaxes on income must be either materially reduced or repealed and a fair substitute devised.

Will the reduction of the surtax rates to thirty-two per cent do away with the above-named objections? In my judgment, it will not. The force of the arguments will be somewhat reduced, but it is difficult to believe that a thirty-two per cent surtax, superimposed on a normal tax of eight per cent can, in the long run, be successfully collected, particularly in view of the avenue of escape offered by a vast volume of tax-exempt securities. The difficulty is, that the fiscal needs of the government and popular opinion will, in all probability, not allow us to reduce surtaxes to the point where they can be successfully collected, and we are driven, therefore, to search for a substitute. That substitute can, I believe, be found in what, for want of a better name, I have called a graduated spendings tax. Perhaps I can best describe this tax by summarizing the terms of a bill introduced by me during the present session of Congress:

The spendings tax is a tax on all expenditures for personal living and family purposes, of every citizen or resident of the United States made during the calendar year, but not including the following items:

- (a) All the ordinary and necessary expenses of carrying on a business, trade or profession;
- (b) Taxes, except spendings taxes;
- (c) Gifts for charitable or educational purposes;
- (d) Medical and dental services, and funeral expenses;

- (e) Investments made during the year, including real estate, except in the case of the purchase of a home when the taxpayer already owns one;
- (f) Insurance premiums.

An exemption of \$2,000 is allowed to a single man or woman, and one of \$4,000 to the head of a family or to a person having one or more persons wholly dependent on him or her for support.

The tax is imposed at a graduated rate, which increases one per cent for every \$2,000 spent up to \$18,000, and thereafter one per cent for each additional \$1,000 spent, up to \$50,000. All spendings in excess of \$50,000 are taxed at the rate of forty per cent.

Every individual whose spendings exceed \$2,000 for the preceding calendar year shall make a return on or before the fifteenth of March, in such form as the commissioner of internal revenue may provide. In particular he may be required to return the following information:

- (1) Cash or equivalent assets on hand at the beginning of the taxable year;
- (2) Total receipts, including amounts borrowed;
- (3) The amounts of the items exempt from taxation, including investments;
- (4) Cash or equivalent assets at the close of the taxable year.

The tax is not made applicable to the spendings of the year 1921, but in order to meet the existing emergency the bill provides that the largest rate of surtax on income received from the date of the signing of the act to the end of the calendar year shall be thirty-five per cent. After 1921 all surtaxes on income are abolished, and the spendings tax substituted therefor.

The administrative provisions are substantially those of the present personal income tax act.

The proposition is not a novel one, though, as far as I know, it has never been actually tried out. John Stuart Mill advocated such a tax as the only sound income tax. He was met with the objection that it was a rich man's tax, because the rich man could save more than the poor man and would profit more. This was his answer:

"It has been further objected that since the rich have the greatest means of saving, any privilege given to savings is an advantage bestowed on the rich at the expense of the poor. I answer that it is bestowed on them only in proportion as they abdicate the personal use of their riches; in proportion as they divert their income from the supply of their own wants to a productive investment, through which, instead of being consumed by themselves, it is distributed in wages among the poor. If this be favoring the rich, I should like to have it pointed out what mode of assessing taxation can deserve the name of favoring the poor."

The introduction of this bill has aroused a good deal of interest, and while I suppose there are objections which can be urged against this tax measure—as against every other tax measure that I have ever heard of—to date no very serious objection has been put forward.

The following arguments can be urged in favor of such a tax:

Since all income saved and invested will be exempt from surtaxes, it will free surplus liquid capital and make it available for the needs of agriculture, commerce and industry. It will solve the tax-exempt security problem. It will shut the door to the escape from income taxation by means of losses and gifts. It will promote thrift and discourage extravagance. It can fairly claim the virtues of the sales tax, being in effect a tax on money spent for consumption, without being regressive in character or laying a disproportionate burden on those least able to bear it, and without being open to the serious evils which arise from the pyramiding of the tax. It maintains the principle of a graduated tax, based on what economists have held to be true income for taxation purposes. It does away with the discriminatory burden now laid on partnerships as compared with corporations and puts them on an equal basis. It will yield at least as much as the present law, and while making use of existing machinery, it should prove easier to administer since we shall have eliminated the principal means of evasion.

MARTIN SAXE of New York: Of course all of us are very much interested in the observations of Mr. McKenzie and Mr. Satterlee. There must be one point on which they agree, and that is the proposed increase of the corporation income tax from ten per cent to twelve and one-half, or fifteen per cent, as being particularly onerous to the large class of small corporations, and, to my mind, another class and a comparatively large class, which was not mentioned. I refer to that class of corporations which leased their properties for a long term of years some time ago when interest rates were low. Such corporations have a fixed income, which cannot be increased. Those classes have not been affected by the excess profits tax to any degree. They are not affected to any degree by the capital stock tax. Those classes are going to be more heavily burdened by the proposed bill than any other class of taxpayers. Now, the large corporations are usually well represented, wherever the subject of taxation may be taken up, either at Washington or even here. I think that this association ought to do something, at least to register its stand, in the interest of the large class of small corporation taxpayers who are not represented, who have not the means to be represented; and with that end in view, Mr. Chairman, I have drafted a resolution which I should like to read and offer for reference to the committee on resolutions:

(Reading): Whereas it appears that the 1921 Federal Revenue Bill, now pending in Congress, will provide for the increase of the corporation income tax from ten to fifteen per cent, and

Whereas the great class of small corporations with small incomes, and another large class of corporations with fixed incomes by reason of long-term leases of their properties, made at times that interest rates were low, will be subjected to a fifty per cent increase of their income taxes and enjoy no benefits from the proposed repeal of the excess profits tax and the capital stock tax:

Resolved; that the National Tax Association in fourteenth annual conference assembled, this 15th day of September, 1921, in the interests of the small corporation taxpayer, disapproves the proposed increase of the corporation income tax, unless a schedule at proper rates is provided for, so as to protect the great number of small corporations and corporations with fixed income, and

Further Resolved; that copies of this resolution be sent to the appropriate officers and committees of the United States Senate and House."

THE CHAIRMAN: The resolution is received without debate, under the standing rule, and referred to the committee on resolutions.

JAMES L. SAYLER of Illinois: I think on the question of raising national revenue from corporations and individuals, that the more we look at it from an individual standpoint, the better off we shall be. I am not saying that the corporation should not bear a certain share of the taxes, but when you look at it by and large, from an equitable standpoint, after all, the method of taxing net income in the hands of the individual, whether that income is derived from a class like a business enterprise or from investment in a corporation, will work out best in that way, and the step that is made in this new bill, while it is rather slight in that direction, I think is going to be approved, and I believe that this association in the future will come around more nearly to the conclusion that revenue that is to be raised by an income tax should be based upon the net income of the individual. The only problem is that if the corporation, as a separate entity, must bear a certain share of the taxes for the operation of the federal government, how far and on what principle should it be applied. Mr. Zoller and others have stated that point. I should like to see in the Proceedings of the association or in the Bulletin, a discussion of that point, that if we have arrived at the principle that the main feature in the raising of national revenue taxes should be based upon the net income of the individual, and that the corporation, as a separate entity, should bear a certain proportion, what that proportion should be, and what would be the best method to raise it.

CAPTAIN WILLIAM P. WHITE: I am a small taxpayer, as an individual and also as a corporation, so that I am not here to defend great wealth. Part of the trouble that I find in taxation is in trying to enact a law that will be equitable. Now, the exchange of capital assets, so far as I know, has never been conceived of as producing income, except where it has been the business of individuals to make such exchange. When the Congress enacted a law that assets had a value of 1913 and any gains on their sale in the future should be considered as income, they failed to consider that 1913 was a year when prices were low, and it was not fair to take that period as a basis, in the first place. That is simply an example of injustice in forms of taxation.

In 1902 I bought a piece of property, and I paid ten thousand five hundred dollars for it; in 1913 I wanted to sell that property, but I was told I could only get six thousand dollars for it, and I said, "I will not sell". I was able to hold it until 1919, when I sold it for nine thousand dollars. Now, did I make a loss or gain on that property? Should I be taxed or not?

MR. PHILIP ZOERCHER of Indiana: You made three thousand dollars and lost thirty-five hundred dollars?

CAPTAIN WHITE: I think that is the trouble with assessing values due to the sale of capital assets. Now, anybody who sold his capital assets during the period of expansion, during the war, sold them at inflated values. If a man invested his money at that time he paid an inflated value for whatever he bought, and eventually he will make a loss. If he is clever, he may make a gain; he may have purchased something that will retain its value; but in my view of things, the values of 1918, 1919 and 1920, we shall not see again in this country for many years.

Now, in regard to the capital stock tax, I differ from those who believe that that should be repealed. I think that the capital stock tax is a very proper tax, but it should be levied, whether against individuals or corporations, as a license, so that the government may determine who are in business and who are not; who are subject to the return to Washington for taxation and who are not. The tax is small, but it defines one thing, the capital invested; and it is on capital investment, I think, that taxes should be levied rather than on capitalization or capital stock. It is not a capital stock tax; it is a capital investment tax that we are trying. The only point is, when it comes into the treasury department hands, they say, "No, it is a capital stock tax, and your stock is worth so much," no matter what the valuation of your corporation may be. It is the earning capacity of your corporation during the past three or four years that determines the present value of your present stock. I say that is foolish, pure and simple.

The third is the repeal of the tax on transportation.



had an increase in New England of some fifty to sixty per cent in freight rates. That is not the trouble with New England business. It is not the tax on freight; and the repeal of that tax is only going to relieve us in one direction, to add the burden somewhere else; and the freight tax is the fairest tax that is levied today. Now, in regard to the tax on passenger rates, I acknowledge that that falls very heavily on business; no question about that. For that very reason, those who are interested in sending traveling men abroad would be interested in having that tax repealed. I think it ought not to be repealed; I think it ought to be reduced. When it comes to levying a tax on Pullman accommodations, I think that tax, instead of being reduced, should be advanced. Anybody who wants a Pullman accommodation should pay for the privilege and should pay in good round dollars.

ROBERT MURRAY HAIG of New York: I wish to emphasize a point mentioned by Mr. Satterlee. I fear that in our eagerness to relieve business of hampering restrictions we are proposing to do one unwise thing. In the treasury department, when the groundwork for the Revenue Act of 1918 was being constructed, one of the points which gave greatest cause for concern was the possibility of evasion of war taxes through investment in property temporarily unproductive, but full of promise for large gains upon sale in the future. Serious consideration was given to proposals which offered possibilities of reaching such profits for taxation at war rates whenever they might be realized.

We have apparently traveled far since that time. An examination of this bill reveals changes with reference to the closing of transactions for tax purposes and with reference to the establishment of the new class of capital gains which make it easy to do precisely that which during the war we felt it only fair and just to prevent. In my opinion the proposed segregation of capital gains is incorrect in theory, difficult of administration and dreadfully unfair in its practical results. Is there no longer any sentiment among us in favor of relatively heavy rather than relatively light taxation of "unearned", "funded", "lazy" income? Where the 1918 law provided a cushion, the new bill proposes to supply a feather-bed.

WILLIAM A. HOUGH of Indiana: It seems to me, Mr. Chairman, that Mr. Sayler touched the electric button of this whole situation when he said the individual was the person to be considered. The resolution which has been introduced here does not touch the real wrong which is created by this fifteen per cent tax. It does not fall upon the large corporation or the small corporation, but it falls upon the small stockholder in either a large corporation or in a small corporation. I have in mind now a widow with three small children who drew in dividends fifteen hundred dollars from a

corporation she is interested in. That income, if received from investments of another kind, investments not in corporate stock, would be entirely free from income tax under the present law, but if she holds stock in the corporation, and she does, that small income of hers is subjected to a fifteen per cent tax, so that the injustice which is wrought falls upon the small stockholder in either a large or small corporation. There are 157,000 stockholders in the Pennsylvania Railroad Company; many of them are people of small means, and their small income will be taxed fifteen per cent, no matter whether it is only five hundred dollars—it still is subjected to this fifteen per cent tax which falls upon corporations and which must ultimately be paid by the small stockholder. So, the resolution which is proposed does not reach the persons who are really entitled to some relief; and whatever is done, whatever can be done, ought to be done to relieve the small stockholder instead of the small corporation.

One other point I wish to call attention to, and particularly to the attention of Judge Zoller, is this: That in speaking about the profits realized from the sale of property, he failed to note the absolutely indefensible position of the internal revenue department, which adds to the actual profit which has been realized, a depreciation which they figure on the property from the time that they fix the value to the time it is sold, regardless of whether depreciation has been claimed or not. A man died who was a half-owner of a farm. That farm went to his widow. The other owner sold his for one hundred dollars an acre. The widow at a later time sold her half-interest for one hundred and ten dollars an acre, and a smart Aleck lawyer, who could not earn a living otherwise, and had been defeated for the nomination for county auditor and consequently was qualified to accept a position with the internal revenue department, came over to our town and he said to the woman: "The value of this land was fixed by the sale which occurred in 1916, at one hundred dollars an acre; you sold in 1920 for one hundred and ten dollars an acre, therefore you have made a profit on those eighty acres of land of eight hundred dollars; in addition to that, the land has depreciated on account of the buildings, estimated at one hundred and fifty dollars a year; that, added to the profit which you have made on the sale of the land, makes seven hundred and fifty dollars more, so that your actual profit on the land sold was fifteen hundred and fifty dollars"; and rather than take the matter into the court she paid the tax. This woman had never deducted any depreciation from her income in making her income return; if she had, the action of the department might be justified. Now, to add that sort of depreciation as a profit has been the custom of the internal revenue department, and it has been carried out in a great many cases.

W. H. KNAPP of New York: Regarding the proposition of the widow that paid fifteen per cent on her eighteen hundred dollars of income; I supposed—at any rate it was intended—when there were public service commissions, that the public service commission in dealing with the public service corporations were to take into consideration the taxes.

MR. HOUGH: This is a merchandising corporation.

MR. KNAPP (continuing): If you show me a merchant who pays the fifteen per cent tax, or whatever it is he has to pay, and who, when he fixes his price, does not put that on his goods, which he sells at retail, I should like to know where he is; he must be crazy. A man was complaining that the State of New York was taxing a corporation four and one-half per cent of its net earnings. I said, "My dear man, how do you fix the price on your machine; you make a cost bill when you go at it?" He said, "Yes; we put in all our material, operating expense, our overhead, depreciation, interest on capital." I said, "You put in your taxes too, don't you?" "Oh, yes, of course." "You put in the four and one-half per cent the State of New York gets?" "Certainly we do." "Then, when the consumer pays you four and one-half per cent you hate to part with it, when you get it from the fellow that bought the machine." It is a consumer's tax.

FRANKLIN CARTER of New York: On the Revenue Act of 1921, Mr. Zoller brought up the question of reorganization, consolidation and merger on the exchange of property. When our committee on taxation of banking institutions went over that part of the bill, they were much gratified that the new provisions had gone into it, but there was one point not covered and I think perhaps you might be interested in knowing of the recommendations that we made to the Senate Finance Committee, adding a further clause. We suggested that the following additional provision should be made:

"When, in the case of the reorganization of a corporation, stock or securities of the new corporation and cash are received in exchange for stock or securities of the old corporation, the cash received shall be applied to the cost of the stock or securities of the old company or to the fair market value of such stock or securities as of March 1, 1913, if acquired prior to that date, and unless the cash so received shall exceed the cost, or fair market value as of March 1, 1913, of the stock or securities of the old corporation no gain or loss shall be deemed to have been derived or sustained until definitely determined by sale or other disposition of such stock or securities."

Another point which we considered was the question of the tax on the disposition of gifts. A most unfortunate provision in the

new bill is that embodied in subdivision (a), paragraph (2) of section 202 as amended (contained in section 203 of H. R. 8245 as reported to the Senate of the United States under date of August 22, 1921). This provision means that the cost to the donor of every gift must be determined by the donee when he disposes of it. It means that every wedding, Christmas, birthday or other family gift, if disposed of, must have the cost ascertained. It will affect every conscientious individual in the United States. Such a provision is impossible of fulfilment, and therefore incapable of satisfactory enforcement. Such a provision will be ignored by many, either through ignorance or because of impossibility of satisfactory determination, and will therefore tend to place the burden upon the conscientious, and will tend to make perjurers out of many who otherwise have every desire to conform to the law and regulations. In many instances the actual cost of property received by gift is unknown, and the property is not received with any idea of subsequent disposition, and therefore there will be created a general discontent with the provision. In view of the fact that the proposed law provides that when the cost is unknown the commissioner (this means his agent in various localities) may assess a value on property at an unknown date, when the value is also unknown it is obviously unjust and incapable of expedient or practical administration. There can be nothing fair in permitting a third party to determine an unknown value at an unknown date for purposes of taxation, and the present method of appraisal at the date of receipt of a gift, for the purpose of determining gain or loss on its disposition seems to be the fairer and more equitable method.

On the subject of deduction of losses, the provision in the new bill, contained in section 214 of H. R. 8245, amending paragraph (5) of subdivision (a) of section 214 of the Revenue Act of 1918, seems to be an unfair measure. It is the intent to permit the deduction of losses in determining net income subject to tax, and the sale of securities in the open market definitely determines the taxpayer's loss. It is obviously unfair to exclude such losses, where there is reinvestment in identical property at or about the time of the sale, and this attempt to penalize will not result in justice. It is a poor method of attempting to separate the sheep from the goats, and a much fairer way would be to severely penalize sales made for the purpose of losses to evade income tax, permitting any losses sustained by bonafide sales as heretofore.

THE CHAIRMAN: The hour at which the conference will, at least informally, adjourn has arrived. Let me remind you that we can go on with this discussion at the session of tomorrow morning, and that now we revert to the really important business for which we came, namely, to have our picture taken, right out here.

[Adjournment of Session.]

## EIGHTH SESSION

THURSDAY AFTERNOON, SEPTEMBER 15, 1921

CHAIRMAN BLISS: Please come to order, gentlemen.

SECRETARY HOLCOMB: It has been suggested by Senator Davenport, that in view of the fact that we seldom see our president, that he preside at one of the sessions. He remarks also that this is an appropriate session, in view of his activities as an assessing officer and also in view of his more strenuous duties recently, as in charge of a traction company in a large city in the hands of a receiver. Those in favor of asking our president to stay in the chair during this session as presiding officer please signify by saying aye.

SECRETARY HOLCOMB: So voted.

PRESIDENT Z. W. BLISS, presiding.

CHAIRMAN BLISS: I thank you very much. I appreciate this. I am sure we have all been led to believe in this Association for a long time that the president did not have anything to do, but that Holcomb did it all, so we have rather relied on him for everything. If I can do anything with my feeble efforts, I am glad to do so.

We shall be obliged to depart somewhat from the regular order shown on the program this afternoon and I will first call on Mr. Alexander, solicitor of the Boston and Maine Railroad.

MR. THORNTON ALEXANDER: Representing as I do a New England railroad, if in the course of my remarks I make any statements which any of my good friends, the taxing officials of the New England states, or any one else, resents, I wish you would remember that I am strictly a practical man, and not a theorist, and that I may be said to be in a position of voicing the sentiments of the down-trodden railroad worm and really, according to the law of nature, even the down-trodden worm is entitled to squirm, so you can call this a squirm if you want to.

In taxation matters I have been moved to wonder at the variety and diversity of the public utility taxation patterns in the various states of New England, through which the railroad operates, to wit: Maine, New Hampshire, Vermont, Massachusetts, New York, and also in Canada. It has been my effort to find some underlying

equitable theory which would harmonize the principle of these taxes, but I must confess, gentlemen, that I am not ashamed to say that I am still struggling in the morass of contradiction and conflict of theory which seems to shroud or overlay the subject, and that I am being gradually forced into the conclusion that the only underlying theory of public utility taxation, as practically administered, is to charge what the traffic will bear and justify the deed by theory, as necessity requires. Now if it is true, and I believe it is true, that states, as a practical matter, do largely—perhaps not entirely, but largely—regulate their taxation laws and administration by governmental necessity, the converse of this proposition ought to be true, to wit, that the necessities of the public service corporations ought also to be considered in formulating and administering the public service taxation laws. The real purpose of my remarks therefore is this, that a public service corporation, such as a railroad, ought not to be taxed more than the public can accord to permit it to pay. In other words, it is my opinion that the taxation of public service corporations, such as railroads, ought to be based upon their net earning capacity, either upon an income basis or by separate classification which would attain the same end, where the income basis is not practicable; and that the gross earnings tax, ad-valorem taxation and other taxes of a similar nature, which do not take into consideration the net earning capacity of the corporation, are not only not suitable and fitted to such corporations, but that they are detrimental to the individual members of the communities as well as the communities as a whole. I presume that most of you will agree that theoretically, and perhaps practically, the net income basis is the proper basis for the taxation of a railroad or other public service corporation. I do know, however, that I am running contra to the combined view of some of you most eminent and theoretical members, with respect to my statement respecting the separate classification of railroads, for in the report of your committee on public service corporation taxation, made in 1914, of which the learned Professor Bullock was chairman, it was stated that your committee could find no reason for the separate classification of railroads and other corporations of a similar nature; and in that report it was stated that separate classification of any class of property was justified only in so far as the economic characteristics of that class made such a course desirable and even necessary. The committee, however, said that it could not find any economic characteristics inherent in the nature of railroads that made such a course desirable or necessary. In other words, gentlemen, what your committee did was to affirm in substance that ad-valorem taxation, gross earnings taxation or any other valid taxation system, even though it ignored entirely the net earning capacity of such corporations, was suitable and fitted to

public service corporations of the nature of a railroad, the same as private properties.

It is my belief that that assertion is fundamentally unsound, and that gross earnings taxation, ad-valorem taxation and similar tax systems which do not take into consideration the net earning capacity of the "taxee", in the case of railroads and similar corporations is detrimental to the individual and to the community. Your committee supported this position very largely, as I take it, by the statement made in this report, that in their opinion the interests of the consumer or of the shipper were not identical with those of the public; in other words, that by taking into consideration the necessities of the corporation, as you do when you consider the net earning capacity of the roads, you might aid the shipper by some chance, or the consumer, at the expense of the public. It is my opinion, and I know that I am challenging the opinion of eminent men, and perhaps the opinion of all you gentlemen here, when I say I believe that that argument is weak as applied to a railroad or other similar public service corporation, however true it may be with respect to a dissimilar smaller corporation, for a railroad or other corporation of that nature is in the truest sense a public service corporation. The service which it has to sell is not alone to the individual shipper or the individual industry, but is to the community as a whole. There is not a section, a state, a community, or an individual in the United States whose comfort, happiness, and prosperity is not affected to a greater or less extent by rates and service upon the railroad. If a railroad's finances are depleted, if it is unable to do more than meet its operating expenses, if it hasn't the revenue to make desirable betterments, if it cannot keep its service up to the highest standard, if it cannot pay its fixed charges, to say nothing of dividends to its stockholders; in other words, if its rates are high and its service poor, it is not a detriment to the individual alone but to the community or section which it serves as a whole, and to every investor and citizen of that community.

In the case of a railroad which has met with financial adversity, and which is taxed as we are, by the gross earnings tax in one state or by ad-valorem taxes in other states, it ought to be manifest, without demonstration, that any increase of the burden of the taxation upon such a railroad is an increase of the burden upon the inhabitants of the section which that railroad serves.

I have spoken of the fact that if rates are high and the service poor, even though you are enabled to raise your rates, as railroads in New England nowadays are not, the burden is passed on to the community of increased taxes, in depleted service, in deferred betterments, in diminution of return to the investors of the community; but even though the rates be raised, there is a discrimination to the industries of the section, which are unable to compete

on equal terms with the industries of other sections. Now, this is the case in New England, for the railroad history of New England during the past ten years has been a history of declining stock values, of deferred dividends, of receiverships, of financial difficulties and incidentally — among other things — of increased ad-valorem and gross-earnings taxation. Let me illustrate from the experience of the Boston and Maine Railroad in one or two of our New England States — and I do this with considerable temerity, because I do not care to tread upon the toes of any of the tax commissioners of those states — in the State of Maine the gross-earnings tax, for instance, is the only tax upon the railroads aside from the local real estate taxes. It is based upon the total gross earnings of the railroad, without apportionment as to those earnings within or without the state, without consideration of the value of any of the different parts of the road, without consideration of the cost and location of terminals in other states, and without consideration of the amount of business done within as compared with the amount of business done without the state; in other words, the total gross earnings of the whole railroad, line or system are simply divided by the total number of miles of the entire railroad, line or system, to obtain the average gross earnings per mile, and the average gross earnings per mile are then multiplied by the number of miles within the state, to obtain the basis upon which the tax itself is levied. Logical, isn't it? Simple, easily collected.

I am aware that this tax has been justified by the theorists. I don't know whether I shall accuse Professor Bullock of having fully justified it. I am aware that it has been upheld as lawful and constitutional by the Supreme Court of the United States, but the net result of that tax is that while the financial resources of the Boston and Maine Railroad for the past ten years have been steadily declining, the tax has been steadily increasing. In 1911 we paid a tax to the State of Maine on that basis of \$165,000; in 1921 our tax bill was over \$325,000, or an increase of over \$160,000 that year. Now, I am aware that we had big gross earnings in the year 1920. Our gross earnings were large, due to the large amount of business handled. In other words, the road was very efficient in the year 1920. But, what was our operating ratio? That tells the story. 105, gentlemen. That is, for every dollar taken in we were expending \$1.05, so that while our net operating revenue disappeared, our tax, based upon the gross-earnings basis, increased.

Turning now to our taxes in New Hampshire, we have an ad-valorem appraisal basis of the property and franchises of the road, used in its ordinary business. In 1920 the tax commission increased our valuation \$1,505,210, or an increase in the tax of approximately \$67,000 a year annually. Now, gentlemen, just as a



matter of common sense, how can a road which is operating at a loss of five cents for every dollar taken in, be worth more on ad-valorem or any other basis, on its property and franchises used in the state, than it is in years when it is not operating at a loss?

In Vermont we have a certain subsidiary line of road which is taxed upon an ad-valorem appraisal basis of one and one-quarter million dollars. That road has represented nothing but a deficit for many years. The Boston and Maine Railroad is obliged to operate it at a loss, and in addition has to pay the interest upon its bonds. It is recognized to be a liability rather than an asset, and yet we are taxed upon an ad-valorem appraisal as though the road represented one and one-quarter million dollars of assets instead of liabilities. It seems to me it ought to be manifest that such inequalities and injustices do actually and in fact exist in the gross earnings and valuation methods of taxation, and if that is not apparent, let me tell you that our annual report for the year 1920 showed that we had a deficit, exclusive of the federal guarantee, of over \$17,000,000, while our tax accruals were over \$3,000,000. In other words, our net earning capacity was a deficit of \$17,000,000 and over, while our tax accruals increased. Isn't it apparent that such taxes as the ad-valorem and the gross-earnings tax in the cases of the New England railroads and corporations similarly circumstanced must be met by the inhabitants of the Boston and Maine territory, either in depreciated service or by deferred betterments and diminution of return to stockholders, and that the tendency to increased taxation, if it continues, must result in either one of two things, higher rates, if it is possible to get any more revenue out of higher rates, which means higher prices in your communities, or on the other hand, and I say it with bated breath, government ownership, with taxation of the public to make up railroad deficits. It is for such reasons as these, that I believe the proper basis of taxation for a railroad and other similar corporations is either the net income basis or some scheme of separate classification, which will permit the expansion and contraction of the tax burden upon any separate railroad to correspond with the expansion and contraction of its financial resources.

CHAIRMAN BLISS: Three o'clock has arrived and we will take a recess for ten or fifteen minutes now to have the photograph taken, out at this end of the building.

[Thereupon a recess was taken for fifteen minutes for a convention photograph.]

The convention reconvened.

CHAIRMAN BLISS: We will now proceed with the business be-

fore the meeting. I will call upon Mr. Charles R. Howe, chairman of the Arizona Tax Commission.

CHARLES R. HOWE of Arizona: Mr. Chairman and members of the Conference: I find myself almost entirely in agreement with the speaker that has preceded me, and when I say "almost entirely" I mean that I agree with the method that he advocates for taxing railroads. I do not, however, agree with his statement "that it seemed to be the intent of the taxing officials to tax railroads all the traffic will bear." I have been a taxing official for some sixteen years, and my observations have been that this is not the case; that taxing officials are about as reasonable men as any that you will come in contact with. The difficulty he complains of is largely through the big appropriations made by legislative and other bodies, which the tax officials are compelled to meet by levies on property under their jurisdiction.

Prefacing my remarks by a few words, I will state that in Arizona we still have the old ad-valorem system of taxation that the New England states have complained of, and in fact that nearly every state in the Union is complaining of today. However, we do not find that any of them are getting entirely away from that system, and many of them are operating upon it almost entirely. In Arizona, by reason of the fact that our constitution is exceedingly elastic, we have been enabled to adopt a method which very closely approaches an income tax. That has been made possible through the action of the legislature, which was in turn made possible by an amendment to our constitution which left it absolutely open to the legislature to do whatever they thought fit in the way of enacting tax laws. In the discussion of the subject of taxation of public utilities, the brief thoughts that I shall present, will be from the standpoint of the taxing official, inasmuch as there are others on the program better qualified to discuss it from the standpoint of the taxpayer. It is not at all surprising, after a period of fifteen years in public service as a taxing official in the State of Arizona, that I have formed certain definite and fixed ideas on the taxation of this class of property, as well as other kindred classes. The subject we have under discussion is public utilities. Now, the gentleman preceding me discussed it only from the angle of the railroads, which are generally considered public service corporations. I shall discuss it from the angle of both the public utility and the public service corporation.

Public utilities are generally presumed to include gas, electric, water and ice manufacturing concerns, while public service properties are known as railroads, telephone, telegraph and private car and express car lines. However, the subjects are so closely related in their usage that it is fitting and proper that the committee has included the entire group in the subject for discussion. By

reason of the public uses of most of the aforementioned property, they are frequently situated and allocated for the purpose of taxation in more than one state or taxing district. It is principally for this reason that the taxation of the greater portion of this class of property in many states has been placed under the jurisdiction of some centralized body, clothed with large powers for obtaining any and all information necessary to fix a proper appraisement for taxation purposes. Property of this character presents many problems to the taxing official. Not only is it difficult to appraise and value but also the same problems are met when the property is taxed by other than the ad-valorem method. I believe it is a fact that most states differentiate in the methods used to tax railroads, telegraph, telephone, express and private car properties from that used to tax electric, gas, water and ice plants. However, in a few states a straight tax on gross earnings is applied to all. The principal argument for this latter method seems to be the ease with which it can be arrived at. This was dwelt upon by Mr. Alexander. Generally speaking, I believe that the earning power or ability to earn when properly shown over a period of years, preferably not less than five, forms the best basis for the true valuation of all public utilities and public service property, always provided, however, that the valuation arrived at by this method will produce a sufficient amount of revenue commensurate with the cost of government, made necessary by reason of the existence of the aforementioned property. The average annual earning over a five to ten year period not only more nearly reflects the going or true value of the property, but also causes the revenue of a state or taxing district to flow more constantly, thereby avoiding what is known as the peaks and hollows or the fat and lean years of taxation. It is also desirable from the standpoint of the utility, in that it is enabled to estimate very closely what the current year's taxes will be and create a reserve therefor. All taxing officials know that during a fat year, when a large amount of revenue is collected under the system of taxing the gross earnings, the state as well as other taxing districts always find some way to spend it, rarely if ever leaving any balance to carry over into the next year. Then, when the lean year comes, the reverse is true, and oftentimes a condition in financial affairs is brought about because of this situation, that seriously affects the financial standing of a state or taxing district. This is not the case when a method is used to value this property by capitalizing the average annual net earnings over a period of years at a per cent depending largely upon the rate of earnings charged for money in the community or state in which the property is situated. In the State of Arizona, which I have the honor to represent at this conference, approximately seventy per cent of all property valuation for purposes of taxation is founded upon this method. This was only made possible through

a constitutional amendment adopted by an overwhelming vote of the people at an election held in the year 1913. This method was recommended by the tax commission and read as follows: "The manner, method and mode of assessing, equalizing and levying taxes in the State of Arizona shall be such as may be prescribed by law." This leaves our legislature absolutely unhampered. In response to this amendment the legislature conferred upon the tax commission practically unlimited powers to use any method it might see fit to use in arriving at the full cash value of the taxable property in the state. After eight years of operation, under the provisions of the constitutional amendment, and the law that followed, the result has been very gratifying, and we have greatly increased the percentage of property assessed and valued on the net earnings basis until at the present time it approaches seventy per cent of the total, as heretofore stated. By adopting this method, Arizona's taxable property has increased eight hundred per cent in eight years. This has been done with an exceptionally small amount of litigation; at the present time only one case is pending in the courts. That the method has attained a large measure of success is evidenced by the fact that at no time during the eight years since the authority was granted to the commission has there been a demand from the people that it be taken away. Governor Campbell, although of opposite political faith to that of the membership of the tax commission, during all these years, recently made the statement that of all the departments of state government, the tax commission was one of the most efficient and conducted with the least amount of friction. He considered this largely due to the personality of its membership. However, I am somewhat more modest in this respect and believe it more largely due to our excellent constitutional provision and the tax commission law that was made possible by that provision.

Through the capitalization of net earnings to find the value of the property, that sound principle of taxation, "ability to pay" is recognized to its fullest extent. No method of taxation is infallible, and much depends upon the administration of any law or method adopted. An excellent law may be poorly administered and a poor law may be so well administered that its results will equal or surpass those of the good law. Great care should be taken to arrive at an absolutely correct net earning annually when this method is used, inasmuch as this same figure is used in computations each year over the full period used to find the average.

In conclusion I will state that since the adoption of this method the tax commission has enjoyed the fullest cooperation of the representatives of both the public utility and public service properties, although their assessable value has been increased many fold; their only desire seems to be that their values be in accordance with that of other classes of property. This is also true to a

large extent of the other classes of property appraised by the use of this method. While the use of this method does not produce precisely an income tax, yet in effect it more nearly approaches it than any other method now in use in any state of the Union, so far as I have been enabled to ascertain, except the income laws of the three or four states having these laws. I will also say that I believe that if the properties that Mr. Alexander represents were situated in the State of Arizona he would have little complaint so far as taxation methods are concerned.

CHAIRMAN BLISS: We will proceed with the program and I will call upon Mr. George G. Tunell, Commissioner of Taxes of the Santa Fe Railroad.

GEORGE G. TUNELL: Mr. Chairman, ladies and gentlemen: The railroads of several states are in a state of rebellion. I am going to try to explain to you why the railroads in those states are in the federal courts. I for one have tried hard to get along on harmonious terms with the officials assessing the Santa Fe Railroad.

My attitude can be illustrated by a little story. The first chairman of the New Mexico state tax commission was Captain Poe of Roswell. I did not know Captain Poe until some little time after he had been appointed chairman of the tax commission. Before going to Santa Fe I had heard that Captain Poe began his business career as a buffalo hunter, shooting buffalo for meat and hides. I also learned that a little later in life he was made sheriff of Lincoln County, and at that time Lincoln County embraced a large part of southeastern New Mexico and contained within its limits more bad men than any other district of like extent in the west. When I met Captain Poe I met a man entirely different from the man I expected to encounter. I saw that he was a man who was not self-assertive, that he was patient, that he was kindly, that he listened well to the other man's story, that he was very slow to resent, and I sometimes thought that he restrained himself remarkably even under extreme provocation. I expressed my surprise to a friend, who replied, "All of what you have said of Captain Poe is true," and he added, "Do you know, he is willing to take the worst of it—for a while." That is the way we have felt about the assessment of the Santa Fe Railroad.

We think that in some states we have been taking the worst of it, and we were willing to take the worst of it for a time, in the hope that the situation would be mended. But in California this past winter, instead of the situation being mended, it was made very much worse; far worse than anything we had ever contemplated. We felt that without any serious investigation of the situation our taxes would be increased from \$1,509,000 to \$2,244,000.

I wish to tell you a little something of how it came about, because the Santa Fe Railroad wishes always to justify itself before

the public. The increase was based upon the letter I am about to read:

"OFFICE OF  
STATE BOARD OF EQUALIZATION  
STATE OF CALIFORNIA  
SACRAMENTO

January 11, 1921.

To his Excellency,  
Honorable Wm. D. Stephens, Governor,  
and the State Legislature of the State  
of California.

*Gentlemen:*

As directed, this Board has completed a determination from record facts to show present relative burden of Public Utility and General Property taxes as indicated thereby, and herewith sets forth the result of such determination as follows:

Sources of information available and made use of were Total Assessed values and Total Revenues levied thereon for the years of comparison, as furnished by the department of the State Controller, and average tax rate as determined at the last adjustment of such burden in the year 1917, as shown by the report of the Special Tax Commission.

Computations show increase in assessed values of .29716, or 29-716/1000 per cent, which applied to total revenue for the basic year 1916 ..... \$82,529,839.06, show natural increase in total revenue of increase because of increased value without increase in tax rate ..... 24,524,566.97

Total ..... \$107,054,406.03

This total represents the total of 1920 revenue had the tax burden not changed. Total actual 1920 revenue levies....\$144,524,310.12

Average tax rate 1916 basis ..... 1.209%

Stating the proportion we have: As \$107,054,406.03 is to \$144,524,310.12 so is 1.209 to the rate required.

Solving the proportion gives us present average tax rate 1.632%, showing an increase in tax burden as expressed in the tax rates for the years of comparison of .3498 or 34-98/100 per cent, which carried into public utility rates results as follows:

	Present rate	Increase at 34-98/100%	New rate
Railroads and Street Railways .....	5.25%	.0183	7.08%
....."			

I shall now read very briefly from a statement that I made to the legislature last winter. I shall skip until I come to the paragraph headed:

"ARE THE PUBLIC UTILITIES PAYING THEIR FULL SHARE  
OF TAXES?"

I shall now discuss the question whether the public utility corporations are paying their fair share of taxes. In this discussion I shall review the process by which the state board of equalization reached its conclusions. This review will throw light on the proposition whether the percentage tax rates on gross earnings can now properly be jumped up, another and bigger notch.

If it should seem that the following review and discussion of the state board's letter to Governor Stephens is not so simple that even he who runs may read and understand, I hope that some part of my failure to make the situation simple and clear will be charged to the state's indirect method of taxing its public utilities and to the cryptic character of the state board's letter. The board did not state that it had canvassed the whole situation, and had found that the percentage taxes on gross earnings of the public utilities could justly be increased, and it made no direct proposal or recommendation.

In its letter to Governor Stephens, the state board of equalization states that the total of general taxes paid by the general property in 1916 was \$82,529,839.06 and that in 1920 the total amount of taxes paid by the general property was \$144,524,310.12. The board also stated that of the total increase of \$61,994,471.06, the sum of \$24,524,566.97 was due to increased values and the sum of \$37,469,904.09 was due to increased rates. The increase in the tax rates the board reported to be 34.98 per cent. Having stated that the tax rates on general property had increased 34.98 per cent, the state board, without drawing any conclusions or making any direct recommendation, stated what the percentage rates on the various groups of public utilities would be, if each was increased by 34.98 per cent. The state board did not say that this could be done with justice. This inference, however, has been drawn by nearly all readers.

The process followed by the state board looks straight forward and has all the appearance of plausibility. But, on closer examination, it quickly becomes evident that it does not take all the facts into consideration. It leaves entirely out of the discussion the very big fact that the gross earnings taxes paid by the public utilities also greatly increased. The taxes paid by the railroads and street railroads, for example, increased from \$6,862,111 in 1916 to \$10,122,789 in 1920, an increase of 47.5 per cent.

Surely, even to the superficial observer, it must be obvious that there is something radically defective with a method or process that takes no account of an increase of 47.5 per cent in the taxes paid by the property on one side of the controversy. It must be apparent, too, that if the taxes paid by the railroads and street railways had increased by 100 per cent, or in fact by any percentage however large, under the plan adopted by the state board, no credit would have accrued

thereby to the railroads and street railroads. If this statement is not true I hope somebody in behalf of the state board will get up and deny its accuracy.

Under the formula of equalization adopted by the state board the public utilities had no more chance of getting a decision favorable to them than they would have had with an opponent who called, as the coin was tossed, 'Heads, I win; tails, you lose'. On opening the question the board in effect said that it would consider only increases in the percentage rates on gross earnings. It thereby barred out from consideration the great increases in the lump sum tax payments caused by the great increases of gross earnings. This amounted to refusal to deal with the case on its merits.

A moment ago I directed your attention to the fact that the taxes paid by the railroads and street railroads increased from \$6,862,111 in 1916 to \$10,122,789 in 1920, an increase of \$3,260,678 for the period. The board of equalization in its letter of January 11th showed that for the same period the taxes paid by the general property increased \$61,994,471. The board also showed that of this total increase the sum of \$24,524,567 was due to new property and increased value of old property and the sum of \$37,469,904 was due to increased tax rates. I should like to have somebody state, either on behalf of the state board or on his own account, how much, if any, of the increased tax payment of \$3,260,678 made by the railways was attributed to increase of values and how much, if any, was credited to the railways as an offset to the increased tax payments made by the general property due to increase of tax rates. I believe we are entitled to a statement. I shall assume that a failure to answer shows that no account was taken of our increased tax payments. We feel we are entitled to credit. To ignore our increased tax payments is to evade the question at issue.

Governor Stephens, the state board of equalization and the advocates of the King bill in the legislature seem entirely to have lost sight of the wholly artificial character of the California plan of taxing the public utility corporations. Both of the bases set up, gross earnings and the percentages of gross earnings, are artificial and the items that must be dealt with are the value of the public utility property and the amount of taxes paid. Had a tax on gross product or earnings of the farmer, the orchardist, the livestock grower, the merchants and the manufacturer been in force during the past five years, do you think that these gentlemen could be convinced that their taxes had not been increased by merely being told there had been no increase in the tax rate on their gross income?

The public utility corporations believe that Constitutional Amendment No. 1 contemplated that a sincere and earnest effort would be made from time to time to bring about just equalization of the tax burden. If this was the purpose of the amendment the fine recitals of section five of the King bill must be made something more than fine phrases, designed to



make the law invulnerable to successful attack in the courts. The public utility companies insist that there can be no equalization worthy to be called such unless there is an intelligent and honest endeavor to obtain the full, true value of the general property on one hand, and the full, true value of public utility property on the other hand. Everything depends on the sincerity and success of the effort to obtain the full, true value of the two general classes of property to be equalized. All the rest is a matter of records and simple computation.

The state board made no attempt to value the public utilities for the purpose of ascertaining whether they were paying their fair share of the tax burden. The public utilities declare that it was the duty of the state to make a thorough investigation of values and report to each corporation. The private property owner is always notified of his assessment and the law carefully protects his right to be heard in appeal if he thinks his property has been over-assessed. The treatment of the public utilities stands out in striking contrast. The safeguards freely accorded the private property owners have been denied to the utilities. They have not even been informed at what sums their properties have been valued for tax purposes.

The public utilities assert and contend that it is impossible for any board or person to determine whether they are paying their fair share or more, or less, of the total tax burden unless values are placed on their properties. No other process, regardless of whether the mathematical formulæ called into use are simple or elaborate, can be anything but misleading and deceptive.

The equalization process set forth by the state board in its letter to Governor Stephens of January 11th, the public utilities denounce as a crude makeshift. It has been shown that no matter by how much the public utilities had increased their lump sum tax payments, the process adopted by the state board would make it appear that the percentage rates on their gross earnings should be increased. This followed from the fact that the state board considered only the rates paid by the public utilities and chose wholly to disregard the lump sum tax payments, which had greatly increased because of increased gross earnings."

I shall skip and read one more paragraph:

"Now I shall tell you why I believe no valuation of the public utilities was made by the state before the legislature met and why there is now great unwillingness to make valuations. It has been shown that valuations had been pushed up to the last notch and the percentage rates on gross earnings had been pushed up proportionately. Then along came the war and with the war came increased gross earnings and further increased tax payments. In my opinion, no valuation has been placed upon the Santa Fe because a valuation which

would justify the charge that our 1920 tax payment was too low by thirty-five per cent, would be condemned by its own absurdity. In 1916 the Seavey tax commission placed a value on the Santa Fe of \$80,547,000. Mr. Seavey and the state board know that as against this a valuation for today of \$125,000,000 would not look reasonable in the eyes of the unprejudiced. And hence, in my opinion, the resort to the makeshift formula and the smoke screen of abnormal conditions in the stock market. No valuation within reason will serve Mr. Seavey's purposes."

I shall read some figures to show how the market value of the Santa Fe Railway fell from the time that Mr. Seavey, as chairman of the tax commission, made his valuation in 1916. My valuation is based upon the value of the average of the high and low quotations of each issue of stock and each issue of bonds. At the end of 1916 it was \$629,000,000; at the end of 1917, \$565,000,000; at the end of 1918, \$546,000,000; at the end of 1919, \$538,000,000; at the end of 1920, \$501,000,000; a fall, in other words, from \$629,000,000 in 1916, the time of the Seavey valuation, to \$501,000,000 at the end of 1920. These figures of course include the value of our non-operative property.

There is an old adage to the effect that there is nothing certain except death and taxes. I am referring to this old adage because of the situation in New Mexico where we may possibly have litigation in the federal courts. Until this year, I think I may say that we were regarded as good taxpayers in the State of New Mexico. This year because of the very sad financial condition in which the Santa Fe found itself, with other roads, we exhorted the people of New Mexico to restrain their inclination to spend money. In some places our exhortation was not well received. We were charged with being reactionary, over-conservative, unwilling to promote the best interests of the state. This situation obtained down in Curry County. In Curry County this year we were confronted with a levy solely for the maintenance of schools of eighteen mills on the dollar, and our valuation in that county is high, the main track being assessed at \$48,200 a mile with terminals separately assessed. I am not, however, complaining of the assessments, but I wish to indicate that the eighteen-mill rate is not applying on a low valuation. This levy does not include the building levy or the state school levy. We think that the readiness of the people of Curry County to vote money for school purposes and road purposes might be seriously changed if they were called upon to pay in the same proportion that we pay. We think that land in Curry County is assessed at about one-third of its value, and many of the people don't pay taxes.

In New Mexico the old adage does not hold good. There is nothing certain about the payment of taxes. Taxes are largely

voluntary contributions. Until about two years ago I don't think that there was a record of property having been sold for delinquent taxes. I want to read to you briefly a table showing the collection, or rather non-collection, of taxes for the year 1920. These taxes became delinquent last June.

Tax payments in—

Bernalillo .....	85 %	Quay .....	83 %
Chaves .....	64 "	Rio Arriba .....	57 "
Colfax .....	81 "	Roosevelt .....	72 "
Curry .....	82 "	Sandoval .....	61 "
De Baca .....	71 "	San Juan .....	67 "
Dona Ana .....	74 "	San Miguel .....	55 "
Eddy .....	55 "	Santa Fe .....	70 "
Grant .....	91 "	Sierra .....	62 "
Guadalupe .....	75 "	Socorro .....	51 "
Lea .....	40 "	Taos .....	45 "
Lincoln .....	76 "	Torrance .....	78 "
Luna .....	82 "	Union .....	51 "
McKinley .....	84 "	Valencia .....	77 "
Mora .....	76 "	State .....	71 "
Otero .....	70 "		

The situation is really very much worse than is indicated by these figures. The corporations want to keep their property clear and pay their taxes. For instance, the Santa Fe pays nearly one-half of the taxes in some of the counties. When you check off our contributions, the other fellows are really contributing in a small measure. I am glad to say there is now some real attempt being made to bring about a change.

I want briefly to refer to some suits that have been begun in New Mexico. In Rio Arriba County a suit was begun to recover back taxes of \$14,000 against the Chama Improvement Company. The newspaper statement of the complaint says: That during the years 1908 to 1919, inclusive, these people failed to pay their taxes. Here is another one: The complaint recites that from 1907 to 1919 they failed to pay. Here is another newspaper clipping, very short: The tax commission suit against the La Joya grant is settled for \$23,000. The tax commission suit against the La Joya grant in Socorro for delinquent taxes for the past nine years has been settled. J. E. Saint, head of the tax commission, stated today the trustees of the grant would pay five thousand dollars at once and eighteen thousand dollars more at the rate of forty-five hundred dollars every three months until the full twenty-three thousand dollars is paid, under the terms of the settlement. The delinquency was found to be approximately forty thousand dollars. The Catron estate has figured in many of these delinquent tax cases. A couple years ago Catron, who was a large land owner, wished to sell one of his grants in Santa Fe County. The pur-

chaser would not purchase without the title being clear. Mr. Catron was not disposed to pay one hundred cents on the dollar, so he went into the district court and a compromise was reached, and the money was paid over. These taxes covered a long series of years, and were paid over to the District Attorney. The county expected to get some money, but it is having as much difficulty in getting the money from the District Attorney as it originally had in getting it from Catron.

I think I have said enough to indicate that in New Mexico tax levies are not regarded seriously by general property owners. A man pays his taxes when he is ready. I will venture to say that if you entered Mora County and began to inquire for the court house you would be a long time finding out from the natives where the court house was. Very few know where the court house is located, and if after spending some time in Mora County you did learn the location, you might spend several days—am I not right, Colonel Saint?—in getting into the court house. You would almost certainly find the court house locked when you got there, with nobody in attendance.

The leading railroads in Iowa obtained an injunction from the federal court a few days ago because they showed to the satisfaction of the court that the railroads were greatly over-assessed in comparison with the biggest item of property in the state, that is, farm lands and improvements. Farm lands with improvements in the State of Iowa are valued this year for taxation purposes at an overage of \$76.66 per acre and assessed at 25% of this amount. The 1920 Census Bulletin on agriculture for Iowa shows an average value per acre for land and buildings of \$227.09. Mr. Polleys, Tax Commissioner of the Northwestern, a very diligent and active worker, has carried on very extensive investigation into the value of farm lands, and he is of the opinion that farm lands are not assessed at more than thirty-eight per cent of full value. On the face of things, the railroads do not appear to be excessively assessed, but when the assessment of the railroads is compared with the assessment of other property, there is the grossest inequality. The same situation obtains in Nebraska and South Dakota, and I think that the attorneys representing the railroads in both states have appeared in federal courts and have petitioned for restraining orders to prevent the certification of the assessments.

As I said at the beginning, the railroads were very reluctant to take this step, and this step would not have been taken except for the fact that notwithstanding the adverse conditions in which the railroads found themselves, railroad assessments were increased, while the assessment of general property, farm land in particular, was actually reduced below the very low assessment that had prevailed. So long as there appeared to be a disposition to equalize, we were willing to await the slow action of time, but when this process was reversed, it was more than could be endured.

This year the Iowa farmers asked for the same basis of valuation that the executive council of Iowa has used in assessing railroads. The railroads there for many years have been assessed in a rough way upon the basis of the capitalization of their net returns, more or less arbitrarily arrived at. The farmers said nothing about being assessed on the basis of their net returns in 1919 or 1918 or 1917 or in earlier years. This year, however, with the fall in prices they expressed a desire to change to the method that had been applied to the railroads through good times as well as bad.

I wish to say a few words on this general subject of the valuation of railroads. I was a member of the committee that brought in the report referred to a few moments ago and I wish to absolve Professor Bullock from either strong-arm methods or of seduction. I wish to say that I am in favor of the valuation of railroads at their fair market value, just like any other property. The fair market value of the property takes into consideration earnings. Net earnings constitute the principal element of value, but not the only element. A property which does not produce any income may have value; it may not produce any income over a series of years, and yet have value. That fact cannot be ignored.

I do not believe any system of taxation can be based strictly upon net income. If net income were the only basis I am afraid that in this year 1921 the revenues of states, counties and municipalities would suffer very materially. I do not see how the functions of government could be carried on if net income were relied upon solely to produce revenue.

I am in favor of the assessment of property at its fair market value because the fair market value takes into consideration not only net income but all other factors of value. In some cases it is very difficult to arrive at. Failing to get the fair market value, I think that we must try to ascertain those factors, those considerations which would lead a man to pay a certain price for property or which would lead another man owning property to sell. As I have already stated, net railway operating income is the principal factor in determining the value of a railroad, but there are other factors. Net railway operating income or net income as a basis has this decided disadvantage: It is based upon past performance. The past and the future may be entirely different. The man who buys property is vastly more concerned about the future than about the past.

WALTER H. KNAPP of New York: May I ask how you allocate that income. Take New Mexico for instance; your road runs from Chicago to Los Angeles or San Francisco?

GEORGE G. TUNELL: To both places.

MR. KNAPP: How would you allocate? What portion belongs to New Mexico and what proportion to Arizona, and so on.

MR. TUNELL: I can best illustrate that perhaps by Arizona. The Arizona Tax Commission holds that our mileage in that state is representative of the system mileage and it capitalizes our net railway operating income per mile of road at 8 per cent. In general, I would find the fair market value of our property by the stock and bond method, I would get the value of the system as a whole; I would make deductions for the non-operative properties. The gross earnings basis of apportionment might be satisfactory to me; the all-track mileage basis might be satisfactory to me. I do not believe that you can arrive at values by any hard-and-fast formula. The element of judgment cannot be eliminated. If values could be arrived at by formula, a clerk would suffice.

In Arizona we get along pretty well with the tax commission. It makes an ad valorem assessment. It ascertains the value by capitalizing net operating income. The tax commission uses a five-year basis. At the beginning we had some difference of opinion as to what the net operating income was, but that was quickly ironed out. In Arizona the state tax commission assumes, as I said a moment ago, that our property there is typical of the system. The net railway operating income as defined by the Cumings-Esch law is of record. The tax commission multiplies the average net operating income per mile of road for a five-year period by the number of miles of main line in the state and capitalizes the amount obtained at eight per cent.

CHAIRMAN BLISS: We are fortunate in being able to hear from a gentleman well qualified to speak along these lines, whose name is not on the program—Mr. Lyons of Wisconsin.

THOMAS E. LYONS of Wisconsin: Ladies and gentlemen: As the Chairman kindly announced, I did not come here to take part in this discussion, but in the absence of some of the parties who were to speak and in view of the presence of two very competent railroad representatives, it was thought that the administrative departments should be more fully represented.

I may say at the outset that I have no quarrel whatever with the position taken by Mr. Tunell, that railroads should and may be fairly assessed under the general system or method that he suggested. Neither have I any quarrel with Mr. Alexander on the question of the gross earnings tax, which seems to me unsatisfactory from any standpoint, and subject to all the inherent defects of the sales tax, which to my mind are numerous. The gross earnings tax, as far as I know, exists now in the State of Maine, partially in the State of Vermont, as a substitute, or did some years ago, and in the State of Minnesota. It has been abandoned in all the other states of the Union.

FRED R. FAIRCHILD: How about Connecticut?

MR. LYONS: If that is true, I did not know it.

MR. KNAPP: New York has it, in a way.

MR. LYONS: It has some of the elements; I did not think it was regarded as the gross earnings system. My information, then, is not exact, but that is not important to my discussion anyway. The only point I desire to make is that the gross earnings system of taxing railroads is practically abandoned, even though it exists in five states or six, because we have forty-eight of them, and in all the other states the ad valorem system of assessing railroads is in vogue, and is therefore the prevailing system. Now, I take it, the reason the ad valorem system was adopted is because it was practically the only system of taxation known at the time railroads came into existence. There is the further reason for it, suggested by Mr. Tunell, that it is a practical necessity.

It was pointed out that under a gross earnings tax, in certain years, some railroads would pay more than their net earnings. Undoubtedly so. It was then suggested that the tax should be based on net earnings; but suppose you had an income tax in such a year, these railroads would not bear their proper proportion of the tax burden because, having deficits and losses, they would pay no tax at all. The same would be true of other property. Take the State of Arizona, with its vast stretches of vacant land—they are of some value but do not produce anything—you cannot apply a net earnings tax there. Take the closed factory, the vacant house, the abandoned shops, you cannot apply net earnings to them. We must have the ad valorem system; it is the basic system of taxation in America, and undoubtedly will continue for many years.

Now, there is of course the alternative of making a separate class of railroad property and applying separate terms to them. Whether that is desirable or not I shall not stop to discuss. There are undoubtedly arguments to be used on both sides. But when you have the ad-valorem system, applicable to all other classes of property in every state of the Union—when you have that system well entrenched—is there anything inherently wrong in applying it to railroads, if you equate or apportion the burden imposed on them to that imposed upon other property? That is what the law of Wisconsin attempts to do. I think I may go further and say that is what the administrators attempt to do. They may not always succeed; but that is the aim of the law. A brief outline of our system will show that it is not unlike the system that was outlined for Arizona.

First we determine the value of the road, and in order to do that it must be treated as a unit. It is well known that railroads seldom sell, in their entirety. No man goes out in the market and

buys up a railroad, or at least we seldom hear of it. Railroads are transferred by sale of stocks and bonds, when they are transferred at all, and then only partially. You cannot apply the sales tests. You can apply it to farms, mines, factories and personal property of all classes; and it is applied. You must resort to other factors, in order to determine the value of a railroad. Under our system the railroads make quite elaborate reports of their original cost, capitalization, bonded debt, interest and dividend rates, amount of stocks and bonds and their market value, the physical condition and value of the property, as they estimate it, and the gross and net earnings for the entire system, and for the state. There are other data furnished as well as these. The data so reported by the various roads are classified, tabulated and analyzed and set before the commissioners when they sit down to make the assessment. Of course, in the meantime we get all other available information bearing upon the value and condition of the road. From that information, using the net earnings as the most important element of value, the assessment is made.

I think the first speaker erred in assuming that under the ad valorem system net earnings are excluded. They are not excluded but on the contrary are treated as the most important element in determining the value of the property, and that of course is true of all value. Why does a man buy a cow of high grade, instead of a scrub cow? Because it has a greater productive capacity; it will yield more, either daily or monthly, and the income will be greater for that reason, or it will sell for more in the market. It is so with houses and lots and land and all other things; so that earnings are inherent in the ad-valorem system of valuation. Gross or net earnings, both for the state and system, reckoned on a five-year basis, to avoid sudden fluctuations, are then capitalized at various rates so as not to bind the judgment of the assessing officer by any rigid or arbitrary rule. There are conditions where a given road may require a higher rate of capitalization than another, so this play of judgment that Mr. Tunell speaks of enters in. These capitalizations are not followed exclusively, for the simple reason that no valuation of several properties of this character can be made by one formula. All elements must be considered and different weights given to them under different conditions; but all of the information is before the commission and then we determine from these factors the valuation of the entire system.

When the value of the system is determined you have only gotten part way because no state can tax more than the property within its own borders; it cannot tax any part of the system without the state. The question of how to separate the property in the state from the balance of the system was raised by Mr. Tunell when he was on his feet. It cannot be done with strict accuracy; neither can you apply any fixed formula here. The



early legislation on the subject provided for the apportionment on the basis of road mileage, but that is a very imperfect test, because the road mileage through a prosperous state, like Iowa for example, is very much more valuable than through Nebraska, and infinitely more valuable than through Wyoming or the Rocky Mountains, although the latter cost more money to build and maintain. So that track mileage is not a safe test. Therefore we take the gross earnings, indicating the volume of traffic, the net earnings, indicating the profit, the all-track mileage, side tracks, switch tracks, all tracks—so that the density of traffic will be recognized; and in addition the physical value of the property, or the cost of reproduction in each of the several states. Usually, all four factors are used, and sometimes some of the representatives prepare an additional factor, the car mileage revenue—but these four are generally used. The apportionment is made by the use of these factors, namely, by taking the average of the percentages of all-track mileage in the state to the entire all-track mileage; the net earnings of the state to the entire net earnings, and the same for gross earnings and physical property, or cost of reproduction.

When the value of each road in the state is determined, another important question arises, as to what rate of taxation shall be applied. In the case of a farm or a factory or of a city lot, of course it is the rate of the local district, but railroads run through the entire breadth of the state. What rate should be applied to them? Obviously it is impracticable, and I think unjust as well, to apply the rate of the individual districts through which they run. That system is in vogue in many of the states, but it requires further separation into these smaller units, and that is difficult. So, in order to follow out the principle that the burden upon the railroads should be equated to correspond with the burden upon other property, we do not attempt to impose upon the railroad the rate of taxation of any given district or of all the districts through which it runs, but the average rate of taxation for the entire state. For this purpose we ascertain the entire amount of property taxes levied in the state for all purposes, town, county, city, village, school and state. Then the tax commission is required to make an assessment of all the taxable property in the state, and does so every year. That assessment is made primarily on the five-year sales average of real estate, that is by collecting all the normal sales made throughout the state, taking the consideration of the property sold and comparing that with the assessment of the same property, and then applying their ratio to the entire local assessment of the state. The result is the state assessment of real estate. We have reports of personal property from our local representatives, of which we have forty scattered around the state, known as our assessors of incomes, who are highly qualified to make intelligent reports of the value of personal property. The

true value of all the property of the state is ascertained as definitely as it can be by this process and on statistical basis. Then we divide the entire amount of taxes raised in the state by the true value of all the taxable property, and that is what we call our average rate of taxation, and that is the rate applied to railroads and street railways. The latter derive a very distinct advantage from this circumstance and pay materially less taxes than they would pay if they bore the local rate of the districts in which they are situated. Then, after that rate is applied and the tax is computed, the entire tax is paid into the state treasury and retained for state purposes. By thus treating the railroad as a unit, and applying the average state rate, an attempt is made, as I said at the outset, to equate the burden applicable to railroads with all other property of the state, and in theory of law I do not know how you can get any closer to it. It is not for me to say how satisfactory the administration is to railroad officials. I think I can say with safety that very little complaint is made against our law. On the other hand, it is generally commended.

Now, it is plain that railroads and other public utilities have had a very serious time for the last three or four years, and while we have not recognized the decline in railroad values to the extent of dropping them down to the present stock and bond value, we have reduced the assessment, and at the same time there has been a very marked increase in the assessment of the general property of the state. We have thus been able to recognize the downward tendency in railroad values and the upward tendency in other values up to recent date. That comes in part from the fact that we use this five years' average, which tends to steady the movement and prevent sudden ups and downs. When railroads have an exceptionally high year, they are not assessed on the basis of that year's earnings. The same is true in the case of very low earnings. In other words, we follow the method indicated by Mr. Tunell, and the assessment of Wisconsin railroads today, as compared with the high-water mark of say 1917, is approximately fifty millions less than it was at that time. In the meantime, as I said before, the general assessment of taxable property in the state has increased. This covers as much as time will permit, and as much as I care to say on the subject.

CHAIRMAN BLISS: I will ask Mr. Beatty of the Utah Power and Light Company to address the meeting.

WILLIAM N. BEATTY of Utah: Mr. Chairman, ladies and gentlemen: I do not feel physically fit to go into what I had in mind. There are one or two points I want to bring out, more about the attitude of the individual or local taxpayer toward the public utility corporations on the amount of taxes they pay. Mr. Sanders of the Northern Pacific was telling me a day or two ago about a

man making a campaign in South Dakota for election to some office that had to do tax assessing, and he was addressing the meeting, and some fellow said, "Why don't you put some taxes on the railroad?" The speaker said, "What do you refer to?" The man mentioned the road, and then the tax man said, "How much tax would you put on?" "Oh," he says, "at least \$100,000"; and this man reminded him that they were paying over \$1,000,000 of taxes, which goes to show the attitude of the local taxpayer, and I think that the thing to be done is to educate the local taxpayer as to what conditions are as to his neighbor and as to the other taxpayers in the state, and in that way we will relieve a considerable pressure on the commissions. It will stop criticism of utilities, and it can be done in various ways by newspaper items. In one of the western states recently a newspaper was attacking a power company for the purpose of spreading a municipal plant campaign—bond issue—and among other things it was attacking the assessment of the power company made by the state tax commission. The articles were a gross misstatement of facts, but nevertheless the people were craving that kind of statement. The chairman of the tax commission, with the approval of the Governor, called in the editor of that paper and talked it over with him to see what could be done to stop this attack on the administration, which it was, and among the statements that were made was one of the valuation that had been turned in by this power company to the utilities commission for rate-making purposes. The statement, by the way, was not accepted but was turned in. Why isn't it assessed that amount? The president of this commission said, "Well, do you not recognize that there is a difference between rate-making value and tax value?" "No," he says, "I will illustrate to you." He gave this illustration. You are planning on building a power house in your city; you go out and buy a suitable corner for your power plant, and after you have bought the location you change your plans for the building and need more land. By that time the people that own adjoining land realize what is up, and when you go to them they double the price on you. You think it over and feel that you will proceed by condemnation, but finally decide it is cheaper to pay the price. He asked him: "Should you pay taxes on double the value of the adjoining property?" The editor says, "No". It shows the point, that the local taxpayer, both individually and as a class, can be educated so as to eliminate friction and pressure that is brought from various sources on the tax commission, in both rate cases and on taxation matters; and the same thing applies as between the individual and between the individuals themselves. One man says, "I pay taxes in this block, and John Jones in another block, and I pay more than he does." As a matter of fact he does not know what John Jones pays, and I think that should be taken up strongly.

CHAIRMAN BLISS: The next speaker is F. B. Odum of the Electric Bond and Share Company.

MR. F. B. ODLUM of New York: I wish to preface my remarks with a confession that I know little about the mechanics or technique of state taxation and less about the theory. The organization with which I am associated is responsible, in varying degrees, for the successful financing and supervision of operations of numerous lighting, gas, traction and other utilities, scattered throughout the United States. I come in contact with taxes only indirectly as I see them reflected in the cost of money and the service charge to consumer, and it is from that standpoint I shall speak this afternoon.

When an investor puts his money into a utility he, in effect, buys a transferable annuity. His money goes into dams, stone and mortar, underground pipes, paving and other permanent plants that can neither be permanently withdrawn from the service nor amortized. It is there to stay. In return the investor is entitled to receive a stipulated sum of money annually if earned by the corporation, and that stipulated sum is the last thing to come out of gross earnings. The investor is out on the end of a limb, so to speak, absorbing all the peaks and fluctuations in gross and operating expenses, such as taxes. The stability or regularity of the 6%, 7% or 8% skimmed milk diet, going to the investor determines, to a considerable extent, the cost of money, and the cost of money is one of the important factors in the service charge to the consumer. The point of this, as applied to the subject now under discussion, is that anything that will tend to make more stable, definite and certain the amount of taxes that must be paid by the utility will eventually redound to the benefit of the consumer and no one else will be harmed.

A few days ago, for the purpose of determining the number of different kinds of direct taxes paid by the average utility, as well as the relation between taxes paid and gross income, operating expenses and dividends paid, I selected eight good-sized companies, operating in representative sections of the United States. I found that these companies paid an average of eight different kinds of direct taxes and that, in the aggregate, there were some sixteen or seventeen different methods of inflicting the torture. What was even more surprising, I found that the taxes paid varied from a low of 3% to a high of 13% of gross income; that they amounted to from a low of 4% to a high of 27% of operating expenses and that they ranged from a low of 30% to a high of 155% of dividends paid during the same period. The horribleness of this picture, to my way of thinking, lies, not so much in the fact that the burden of taxes was, in some cases, altogether too heavy, as in the fact that the taxes levied by the different jurisdic-

tions varied so widely. While these companies operate in widely different sections of the country, it must be remembered they all come to the same market and compete for their money, and the one that pays out 27% of its operating expenses as taxes is under a great disadvantage. It is right along this line that I think this association can do a great deal of good with its uniform model tax act.

I believe that public utilities generally are bearing a disproportionate burden of taxation. This can be accounted for in part by the history of the industry. In the early unrestricted days franchises and other taxes were levied by way of participation in the prospective huge profits. Then, after competitive conditions had been tried out and discarded, as not in the public interest, additional taxes were levied as a sort of rate regulator. Then came the modern system of rate regulation, with service on a cost basis, with the inevitable result—in the normal case—that these pyramided taxes now come out of the consumer and not out of the investor; and when taxes get so high or become so fluctuating as to materially increase the risks, then the consumers really pay the tax twice—once as a direct tax, reflected in operating expenses and once as additional return due to increased risks.

There are many good reasons why public utilities should be exempt from taxation. It might be more in the interest of the state to have a low service charge and to attract industries than to use the utility as a tax collector. High taxes and a low service charge do not go together. Why, for instance, should one individual, simply because he happens to have a lighting connection, or a telephone in his house, pay more toward the state expenses than his neighbor who has none of these services? Why should the patrons of a street railway pay large sums for paving, for the benefit of the competitive jitneys and other automobiles? Why should a person being served by a municipal plant contribute less toward the general state expenses than one served by a private company? But I am not going to argue in favor of exempting utilities. I am going to assume that they will continue to be used as tax-gatherers, and on that assumption I wish to advance two propositions:

First: That the taxes imposed should not be so unreasonable as to cast a disproportionate burden on the consumer, as compared with the non-consumer, nor so unreasonable in amount or fluctuating in character as to interfere with the stability of the return, thereby increasing the risks and costs of service.

Second: That one tax susceptible of accurate ascertainment, simple to understand and not depending on judgment or opinion, should be levied by the state directly in lieu of the multitudinous state, county and local taxes now paid. Think

of the overhead and administrative costs alone that could be saved through such a consolidation!

Utilities are now separately classified for nearly every other purpose—rates, service, accounting, purchasing—and there seems to me to be no good reason why they couldn't be separately classified for tax purposes.

What that one form of tax should be, I don't know. I am confident, however, it should not be an ad-valorem tax. In the first place, an ad-valorem tax, applied equally to all classes of property, works an undue hardship on the utility, considering its ability to pay. The usual business turns its capital over several times in one year, whereas it takes a utility from five to eight years to turn its capital over once. As a consequence, earnings bear a high relation to normal invested capital in the first instance and a low relation in the instance of the utility. In the second place, value is an indefinite thing, almost impossible to find in the case of a utility when it is measured other than by earnings. So long as the property is continued in the public service, it is only worth what it will earn, irrespective of how much it costs or what it would cost to reproduce; and, when taken out of service, it is only junk. How much would you give for the Boston and Maine Road, assuming that the operating ratio of 105, mentioned by Mr. Alexander, is to continue permanently and that the road cannot be discontinued? Not much. And, as junk, it's not worth much. Earnings, present and prospective, are the true measure. In the third place, but by no means the least important, the people generally and, in some cases, the tax commissioners themselves fail to understand why there can be two values—one for tax purposes and one for rate purposes. For rate purposes a company that has had early losses in building up its business to a paying basis may be worth more than a company that has been paying from the start. A company that has discarded obsolete property before it has been worn out may be worth more for rate purposes than an identical company with no history of obsolescence. A company that has contributed huge sums toward paving may have a higher rate value than a company that operates its lines on unpaved streets; and yet not a square inch of paving is owned for tax purposes. A rate value is a sum found through the application of technical rules for the purpose of arriving at a service charge fair to the consumers and investors alike. A tax value is largely a matter of equalization. And yet, when the rate commission hands down a value of say ten to twelve million for a given property and the tax commission gives a value of two or three million for the same property, the people, through their misunderstanding, charge both commissions with being self-seeking political log-rollers and corporation tools. Let's clear up this political aspect and popular misunderstanding.

The commissioners are entitled to it and so are the company's officials.

A net income tax is certainly fair, simple and definite. Furthermore, it takes into consideration the ability to pay. The only difficulty is that the state's income, through such a tax, would not be absolutely dependable. A tax measured by dividends paid—or in some way by the return paid to the investor—would be accurate of ascertainment and would tend to put taxes and return on more of a partnership basis, thus lessening risks and decreasing costs.

I don't feel as badly about a gross income tax as do some of my predecessors on the program. A tax could be told and provided for from day to day by the company's officials and, likewise, the state would know at all times concerning its income from this source. A fairer scheme of service rates could be worked out by the officials and rate commissioners. And the state's income would be more or less stable because the gross of the average utility maintains a fairly even upward trend, notwithstanding fluctuations in net. And, in the case of a losing venture, I can't understand how it would hurt any more to go out and borrow money for the purpose of paying a gross receipts tax than for the purpose of paying an ad valorem tax. Possibly, from the standpoint of railroads, surely from the standpoint of tractions, a gross receipts tax would not be very satisfactory, but, from the standpoint of the average utility, I think, given reasonable time and proper service on the part of the public service commission, any reasonable tax imposed can be absorbed. But the tax should be not only reasonable but definite and not dependent on judgment or opinion. It should be a matter of formula. The gentleman who has just spoken has told you how they do it in Wisconsin. An original cost valuation, a reproduction cost valuation, a stock and bond appraisal, an earnings computation, single track mileage and various other things are considered, all for the purpose of determining how much the one corporation—or rather the consumers or patrons of that corporation—should pay in dollars toward state expenses. Simplification and uniformity are needed. Possibly a combination gross and net tax would accomplish the purpose.

CHAIRMAN BLISS: The chair will be obliged to enforce the five-minute rule in the discussion, strictly.

OSCAR LESER of Maryland: In connection with the point made by the last speaker that people cannot understand why property can have one value for rate-making purposes and a different value for taxation purposes, I think there would not be so much misunderstanding if they did not use the word "value"; if you were to say there is one basis for rate-making purposes, which is not value, and ought not to be value necessarily, and another basis for taxation purposes, which is value. The other comment I might

make is an illustration which he gives of some company paying 155 per cent in taxes, based on the dividends. I think that is a false comparison. I think you must include not only the dividends but also the interest paid on their indebtedness. The sum of those two would represent the distributed earnings of the company, because it is perfectly possible for a company not even to pay any dividends. If you came into Baltimore city you could make out a comparison of a large street railway company which has not paid any dividends for several years, and which pays taxes amounting to possibly \$1,000,000.

MR. TUNELL: I think much of the confusion as to the meaning of the terms we are ourselves responsible for. I try always to state exactly what I mean. If I mean original cost, I say original cost; if I mean book investment, I say book investment; if I mean cost of reproduction, I say cost of reproduction, and if I wish to speak of cost of reproduction less depreciation, I use that term, and I use the term "value" only in the sense in which Judge Leser defines it, namely what will the property bring, or as was defined long ago in an old English proverb: "Worth in anything is what it will bring."

MR. ODLUM: May I ask just a word or two. Mr. Davenport, of the committee of apportionment of taxes on interstate public utilities stated that the situation is now in a mess, in which I thoroughly agree, and he suggested that either his committee be empowered or that some other committee be appointed to investigate and report back to the next convention on the subject of an equitable and uniform public utility tax, and I should like to express the hope that that action will be taken.

CHARLES J. TOBIN of New York: Mr. Chairman, I might say for the information of the last speaker, as well as others present, that the committee on resolutions has already passed a resolution to that effect and it will be brought into the general body. It extends the time and broadens the scope of the committee.

GEORGE VAUGHAN of Arkansas: Two extremes have been pointed out in regard to the methods of valuing public utilities. and I think that the evils of either plan of the taxation of public utilities, on ad valorem basis or upon a net earning basis, have been very plainly pointed out, and I think that the only true solution of the problem under present conditions is to strike an average between those two extremes, and to try to reach a valuation—I prefer the word "valuation" to the word "value" for tax purposes—and try to reach a valuation of these public utilities that will involve all the factors that have been so clearly named by Judge Lyons and others, giving due weight to each one of them



Now, the mere fact that the utility does not earn any money, that it runs at a loss—an operating ratio of 105, as the Boston and Maine has been running—is not conclusive evidence that it is not of great value, because even conceding that all public utilities are now under a cloud and laboring under great disadvantages, those of us who will reflect are bound to believe they are coming out, because a public utility involves something that the community absolutely needs. It deals in commodities that are an every-day necessity, and while under present conditions it may be impossible to make an earning this year or the next year, yet there are inherent values there for future realization that cannot be overlooked and must not be overlooked in the present determination of the property's valuation for taxation. Take the example of railroads: It is a very common thing for railroads to be sold on the market on the basis of their common stocks, at a very low figure. I believe it is recalled that Harriman bought the Union Pacific stock at from twenty to thirty per cent, and yet there was a wizard. He knew how to deal and manipulate these stocks and administered the railroad so as to bring a great value to U. P. stock. Now, at the time that railroad stock was selling so low, doubtless the earnings were at a low ebb, and yet the tax administrators' proposition and his duty and function is to value the property, giving all consideration to the different factors; and the mere fact that the property does not pay now and hasn't in the last few years is no justification to say it should be dumped. These public utilities, when they are soundly established and doing a service to the public, are not going to be dumped. It is possible they may go into municipal ownership, but that means that the owners of the property will get a fair valuation. I think the key to the situation is to give weighted judgment to all of these factors, giving due consideration to each one, and then arrive at the conclusion by the exercise of judgment as to what the property is worth, and assess your taxes accordingly.

MR. KNAPP of New York: May I be permitted for a moment, as one of the tax commissioners of the State of New York, to say a word on public service and public utility taxation in that state. One would think, or at least hope, that the empire state might have one of the best laws and methods of procedure in the assessment of these corporations. Unfortunately we are handicapped in that administration by a constitution which makes it absolutely essential for local assessors in the case of state-wide public service corporations to assess the real estate in the place in which it is located. The result is that if you follow the line, as we chart those things, sometimes you will find it runs all over the map, from one end of the State of New York to the other, a distance of something like five hundred miles on the New York Central railroad. That is a situation that at present cannot be cured. We

had a constitutional convention recently and there was a proposed amendment to the constitution which would have permitted the centralization of the assessment of corporations that occupy more than one district. Certain corporations banded together and contributed a large amount of money and conducted propaganda during all the period prior to the election, and under the name of the "Home Rule Tax Association", prevented, it seems to me, what would have been beneficial to them and to the people and the state at large, by overwhelmingly defeating the proposed constitutional amendment. So that we still have the situation that every town and every village and every city assesses the railroad that goes through it, chops it off at both ends. The bridges, tunnels and improvements are assessed locally, according to the ideas of local assessors, and it necessitates on the part of the railroads and other public utilities the employment of an army of tax agents to watch local assessors and to protest on grievance day; and they are taxed at the local rates when the assessment is finally made. In 1899, when Mr. Roosevelt was governor of New York, there was discovered the fact that the occupancy of public places—streets, highways, the crossing of public waters, and so forth, had some value, that there was some element of franchise not taxed; this was denominated a special franchise. A law was passed and became operative, assessing what are known as the special franchises of all these properties. That was before public service commissions came into existence to control rates, and the idea was that there was a certain value that the public owned in these streets and public places, which the corporations occupying and enjoying them ought to pay for, in the shape of taxes. That assessment, known as the special franchise assessment, amounts in the State of New York, as far as the assessment is concerned, to something like six hundred millions of dollars, and it is distributed among the localities according to the location of the tangible property. On an average, about fifty per cent is tangible and fifty per cent intangible, which is the enhanced value of the tangible because of the particular occupancy. In 1907 we had a public service commission which fixed rates. It has seemed to me that this law has outgrown its usefulness. If this property is treated as real estate, it brings about litigation, until now there are over two thousand cases of certiorari pending against the state tax commission, because of these assessments. All these assessments are certified to the localities and it costs the state a great many thousand dollars to make the assessments and certify them to the localities; it costs the corporations hundreds of thousands of dollars to watch the assessments and test them in the courts; it costs the state, in the matter of defending, through the attorney general's office, a great deal of money. We hope that the special legislative tax committee, now at work, may be able to

reach an equitable and proper basis of assessment for these public utilities in the great State of New York. I do not know just how it is going to be done.

It has seemed to me sometimes that a gross earnings tax, possibly supplemented by a graduated net earnings tax, might solve the situation, provided of course we could have a constitutional amendment. I am hoping to learn here. There seems to be a great variety of opinion. I want to say that the last young man who spoke seemed to touch that situation, so far as certain public utilities are concerned, more to my mind than anyone in the audience who has spoken.

We have a small gross earnings tax, as sort of a franchise tax; steam railroads pay one-half of one per cent on gross earnings. Of course we cannot tax interstate business. It is a situation that seems to me needs the most careful consideration of an organization of this character, not only as it affects New York but as it affects every state in the Union. There ought to be some sort of uniformity that would reach and take care of these great industries which the people need. Much of the original stock in such companies did not represent any investment originally; it represented the potential value that went into the hands of those that organized them and ultimately were able to sell. Now, the situation is here; how are we going to meet it; what are we going to do with it? New York is struggling with the problem, and it is certainly very urgent at the present time. We hope to get all the light we can but so far as the special franchise law is concerned, which was regarded as a good law at the time when Roosevelt was governor of the State of New York, it seems to me it has outgrown its usefulness and some other method of reaching that kind of property ought to be worked out. I do not know that there is any other state in the Union that does it as we do. Some states are taxing these companies on their gross earnings. Isn't there some method of working out a gross earnings tax, supplemented by a graduated net earnings tax? The great difficulty, of course, is in ascertaining what are net earnings under all the circumstances. I think the street railroads particularly have a serious complaint. Automobiles have so encroached upon that class of business that they are not the same as they were when originally organized. They are in a very serious condition throughout the entire United States.

FRED R. FAIRCHILD of Connecticut: I feel compelled to say a few words, not with much hope of giving information to this body, but rather to express my own difficulty in reaching some conclusion as to what really is the best method of taxing these public utilities. Mr. Alexander painted a pathetic picture of the Boston and Maine Railroad, which I think must appeal to our

sympathies. He was particularly embittered against the gross earnings tax, and favorably to a net earnings tax, but I think his argument proves too much. It seems to prove that a railroad which does not enjoy net earnings should pay no tax at all. That may be just. I don't think we need to stop to argue that now, but it certainly is not going to be accepted; we are not going to give up entirely the taxation of public utilities that are not making net earnings.

In 1913 we made a very careful study of this whole subject in Connecticut and, after canvassing all possible methods, we decided that the gross earnings method was the best, and within two years the legislature had abolished practically all other methods and introduced taxation of gross earnings for all public utility and public service corporations; and in the case of the railroads it is practically an exclusive tax; they do not even tax the local real estate used for railroad purposes. Now, I am not here to defend the gross earnings tax. I am still open to conviction as to whether it is the best method, although I had a good deal to do with the report that argued to that effect in 1913.

Mr. Lyons has drawn us a very attractive picture of the operation of the ad-valorem method, but there is a difficulty there, and that difficulty, it seems to me, ought to have a little more discussion here this afternoon. The commission in Wisconsin gathers complete data regarding the railroads. From these data it separates out some four, five or six or more factors, each one of which is taken into consideration in arriving at the valuation. Mr. Lyons tells us that the most important one—the one given most consideration—is the net earnings. The result is a valuation, but the commission cannot tell us the exact formula by which these various factors are combined. The result arrived at is something which cannot be exactly checked up by anybody else. It must be given out as the result of the careful exercise of judgment by well-qualified officials, and from what we all know, there is probably no tax commission anywhere more efficiently and honestly working on this problem than the Wisconsin commission. But, after all, you fail to get that thing which Mr. Odlum has pointed out as of great importance to the railroad and to the investor, and I think also to the general public, the knowledge of a certain definite method, the results of which may be checked up or predicted in advance by the utility which has the facts before it. The gross earnings tax at least has that advantage. It is a matter of a few minutes calculation, after the railroad has got in its returns and worked out its accounts. It is a matter of a few minutes' calculation for the tax commission to figure what the tax will be, and any interested citizen or taxpayer in the state may check up the result and make the calculation for himself.

The pure tax on net earnings I do not think most states can

consider, for the simple reason that they cannot permit any corporation to entirely escape taxation. Objections may be found to any method named. There is nothing perfect in this vale of tears, as we all know, and it is not a satisfactory answer to any method proposed merely to point out objections to it. That is, as a practical problem, we face a dilemma which compels us to choose between methods, none of which is perfect. I wish that in the time that remains there might be some further discussion of the merits and defects of the only two methods that it seems to me stand any real chance—the gross earnings and the ad-valorem method.

One word further about the ad-valorem method. When a result is finally reached, you cannot call it the value of the railroad. If it is the value of the railroad that you want, the way to do it would be to find the value of the securities. That is not a very good basis of taxation, but it is about as near as you can come to the value of a public utility corporation. Another method is to get an engineering valuation of the property, a method which has few advocates today. What you get is this hypothetical estimate—base—whatever you want to call it—and therein is its chief weakness. It is neither fish, flesh nor fowl; it is not a thing that can be exactly named, that can be checked up. It rests upon human judgment, involving difference of opinion, and always leading to uncertainty. Now, we have that objection to the ad-valorem method, on the one hand, with its very great advantages, so attractively pictured by Mr. Lyons. On the other hand, turning to the gross earnings tax, we have the disadvantages which have been pointed out, namely, its rather heavy burden on the poor corporation, in time of low profit, and the possibility of frequent tinkering with rates, which is the thing I think Mr. Tunell has found so uncomfortable in the State of California. There are these disadvantages, and doubtless there are others. But on the other side there are the great advantages of certainty, precision and meaning exactly what it says, in a way that can be understood and checked up by anybody. Now, that is about as far as I have been able to go, and if out of the discussion that follows I can get a little further, I shall feel well repaid.

MR. LESER: If precision and definiteness of amount of tax is desired, I recommend the State of Delaware plan, by which a statute is passed from time to time fixing the amount in dollars that each of the railroad companies is to pay to the state.

WILLIAM A. HOUGH of Indiana: I am at a loss to understand how anyone could think for a moment that the net earnings should be used as a basis for taxation. If that were done we would relieve from taxation in the State of Indiana two hundred million dollars of property, because railroads and traction lines are earning nothing. I am at an equal loss to understand how the gross earn-

ings could be used, because we have companies in our state that earned last year in gross earnings twice as much as they did the year before, and still lost millions of dollars. I do not know that there is any sure, absolute way of arriving at a just and equitable basis, but in our state the law requires that all property must be assessed at its true cash value. In our state all rates are equal; every class of property is assessed at its true cash value, theoretically, and the rate is exactly the same upon all classes of property. All public utilities—railroads, telephone companies, gas companies, water works, and so forth—are assessed by the state board of tax commissioners, and local taxing authorities have nothing whatever to do with the assessment of properties owned by companies of that character, excepting where they own real estate which is separate from their other property, and that is assessed locally in the counties and townships where it may be located. The method that we use in assessing electric lines and railroad companies is to ascertain as near as we can what the true cash value of the property is, and then the valuation per mile is fixed and distributed to the counties and townships and cities, where the local rates are fixed upon the distributed value which has already been fixed by the state board of tax commissioners. We have, for instance, in the City of Indianapolis a street railway company which is losing money at the rate of something more than \$200,000 a year. They were assessed for taxation last year by the state board of tax commissioners at about twenty million dollars. The public service commission of Indiana, for rate-making purposes, fixed the value of their property at \$15,500,000. The state board of tax commissioners took the position that it was indefensible for two bodies operating for the state to fix different values upon this same property, fixing it high where it was to the advantage of the state, in order to collect taxes, and fixing it low where it was to the disadvantage of the company for rate-making purposes; and we reduced the value for taxation to exactly the value which was fixed by the public service commission, and I do not see any reason—at any rate in our state it would be impossible—to say that valuation meant something different from “value”, or that there was a different basis. The public service commission is supposed to fix the value of the property, and upon that value they are permitted to earn seven per cent, if they can get their rates high enough to earn that seven per cent. We have traction companies which, if the door were opened wide and they were permitted to charge anything in the world that they saw fit, could not do anything but pay the interest on their bonds. The stockholders could not get a dollar. But, during the past year ninety per cent of the traction companies in Indiana failed to earn enough money to pay their taxes over and above their operating expense. They defaulted the interest on their bonds, and they passed their dividends on

stock. Now, this state of circumstances has grown out of war conditions, which resulted in the great rise in the price of material of all kinds which were used by our companies there, and the advance in wages. The Indianapolis Street Railway Company had a franchise, by the terms of which they were required to furnish service in the City of Indianapolis at five cents, or six tickets for a quarter, or twenty-four tickets for a dollar. When they began to lose money they appealed to the public service commission for an advance in rates. The public service commission carefully considered the matter and concluded to allow the company to charge a straight five-cent fare, thus abolishing the wholesale rate which was used in disposing of tickets, and they are still furnishing service at five cents, resulting in this loss of more than two hundred thousand dollars a year and the passing of all dividends. They are not paying any dividends. Now, my friend this morning who sat back here said anybody would be crazy that did not provide for all their taxes and income taxes and everything in their business so that they could collect it from the public, but you cannot do it in the actual operation of these affairs. Now, when the public service commission gave the company permission to charge a straight five-cent fare, they concluded that they had treated the company pretty fair, and that they would give the employees a raise of fifty per cent in their wages, but they left the company still losing money, just the same. Now then, when we see a situation of that character, we take that into consideration, in fixing the value of these properties, and wherever we find a company that is showing a loss, in the exercise of the judgment of our commission, we reduce the valuation of that property as low as we think we possibly can do it. We take into consideration the net earnings, we take into consideration the general value of the property, we take into consideration the points between which the lines run.

MELVIN G. MORSE of Vermont: I am a novice in the matter of railroad taxation. I have been at it a little more than a year, and yet there are two things of which I am fairly well satisfied. Probably my efforts have resulted in the dissatisfaction that my friend Alexander spoke of so eloquently earlier in the afternoon. However, I have studied the matter enough so that I agree with him in one particular, and that is that I do not believe the gross earnings tax is a proper method. On the other hand, I agree with him that the net earnings is the correct basis, if it can be worked out—the correct theory for all manner of taxation. I know the business men would like to be taxed upon that same basis; farmers and everybody would like to be taxed upon their net earnings. Unfortunately, however, the tax-gatherer is up against a certain proposition of stability of revenue; he must provide for the lean years and for the fat years; for the years of adversity and the years of

prosperity, and that is where, it seems to me, you find an absolute answer to the method of net earnings. I do not believe it can be used. I do not see why a public utility should not be put upon the same basis as any other property owner, any other business man, and if you try to tax all business on this method, in lean years you would not have enough money to run your government. We use in Vermont the ad-valorem system of taxation. Now, isn't it possible that we have valued railroads too high? I want to say that railroad valuations have been materially increased during the last ten years. Back in 1912, as I remember it, our rate on railroads was \$12.50 on a thousand. The average rate of taxation at that time was around \$15.00 on a thousand, or \$16.50, I think. Today the average rate of taxation in Vermont is \$31.66 on a thousand, and the railroad tax is \$12.50. In other words, the average rate of taxation has increased 91% and the rate on railroads has remained the same. Thus, though we have not increased or rather have not diminished the valuation of railroads, during all these years with increasing expenses, we have maintained the same pre-war rate, so that in effect we have lowered their valuation if we have not raised the rates. Now, in my brief experience in this matter, another situation has occurred to me, which it seems should be taken into consideration in the matter of the regulation of railroads, and that is that each state should receive practically the same return from railroad taxation. For instance, during the last two years railroad rates have increased greatly, and we all pay practically the same rates for our transportation. Now, if the State of Vermont should say to the railroads within its borders: You are having a hard time; you are making a deficit, and we won't tax you, we will forfeit all the taxes which we have heretofore gathered from you. And the other states immediately around us would continue with their taxes, you will agree with me, I think, that in that event Vermont citizens and Vermont business, paying the same fares as the surrounding states and not getting any returns through taxation from those railroads, would be treated unfairly. It would not be a fair proposition for Vermont. Now, while this would be an exaggerated case, yet any difference in the return results in a lesser measure in the same inequality. So it seems to me that in order to get at this matter of railroad tax, it should be taken up by the states collectively, to get some uniform measure of taxation. I think that Professor Fairchild has had the right idea; we should get together and adopt some standard method of making or establishing values. It seems to me this is the only way justice between various taxing jurisdictions can be established. I don't know that I am right. I have already stated I am young in the business, but in my study of the matter it has occurred to me that this is one of the fundamental principles; that all of the states should be put practically upon the same basis. We



are all paying the same fares; why shouldn't we get the same return in the way of taxation. Now, in regard to the little railroad concerning which my friend Alexander moved you to tears — the St. Johnsbury and Lake Champlain — I know that railroad better than he does, because I happen to live on it. There is no piece of property in the State of Vermont that is in poorer condition than that, unless it is the service that is maintained on it. But I have already suggested the reason why the valuation was maintained as it was, because for ten years, when other property had been paying advanced taxes, our rate upon railroads remained the same, and in view of the fact that it had been maintained at \$12.50 on a thousand we thought they were getting concession enough so that they could stand the valuation which had previously been put upon it. The valuation is just the same; the valuation has not been changed if I remember. I thank you.

GEORGE SPALDING of Colorado: Wherever the question of taxation is discussed we generally hear the word "uniformity" brought in, and though it will be a step in the right direction, without question, to have a uniform method adopted for the administration of taxes, so far as utilities are concerned, we still run up against what I have termed and have heard called by taxation people in the West the self-assessment of local property. Now, last night we sympathized with the farmer, and to be sure the farmer and the ranch-man need sympathy. At the present time we have little or no trouble with the tax commissions, so far as the assessment and value of our property is concerned, because it is comparatively easy to arrive at the value of a corporate property, particularly where you have only common stock or even preferred stock. But after the tax commissions have assessed the utility, you still run up against the very low value in some of our states which is put on private property. Now, tax commissions have objected to the term "per cent". That is, the law in the majority of states in which we operate calls for 100%, or full cash value. That being the case they generally take our book value, with the other factors, in working out the stock and bond value; but when it comes to land, cattle, sheep, horses and the ranches, I have in mind two states where I know for a positive fact that property is not assessed to exceed fifty per cent. Now, we are assessed in those states at one hundred per cent while in one state our assessment actually exceeds one hundred per cent. We are in the same position as was brought out last night on this tax-exempt security proposition. The greater the amount of tax-exempt securities in the nation the larger the burden is going to be on those who have to pay the taxes, and that same thing holds good when you consider that the majority — I don't know whether it is safe to say the "majority", but we will say a larger number — of property owners

are paying on only fifty per cent of the value of their property while utility corporations are paying on probably 75 or a 100 per cent. That is one thing that has got to be safeguarded. On this question of whether you will have a gross earnings or net, or a stock and bond value or the ad-valorem, I have in mind one state in which we operate which taxed us on the basis of seventy-five per cent of book value last year. This year they have done the same thing, with this exception: we increased our wire mileage in that state two or three thousand miles; they took the value of the property as it was last year and applied the same value per unit of wire, and increased our value fifty or sixty thousand dollars over last year, whereas last year we were running at a big deficit, and this year, in that state, we are not making money enough to pay our operating expenses. Now, that is one of the dangers you run into when you are operating in a state which assesses on the ad-valorem method. There isn't any question at all, in my mind at least—and I am young at the business—but what the stock and bond method, as applied in the West, has worked out fairly satisfactory. The ad valorem method has not worked out satisfactorily.

Mr. Beatty brought out the point of educating the public. It seems to me railroads and other corporate interests are merely tax-collectors for the public and that they should pass these taxes or expenses, if you please, down to the ultimate consumer. Such is not the case. In the West all of our states are large and sparsely settled; it means a tremendous amount of money to carry on our development. We cannot possibly, with the increase in taxes, make our new development pay inside of four or five years. If you undertake to increase your rates to a point where you can take care of all your overhead charges, including the very rapidly increasing taxes, you will stop that development. I liken the telephone proposition in some ways with gas, and so forth. You go into a small town and install your system. Mary and John get together and they have decided that they are going to put in a telephone. They have so much money; the telephone is placed, and the rate is \$1.50 a month or \$2.00 a month, if you please. Now as taxes increase you step over to the state house and apply for an increase in your rates; they grant that; then you increase your rates, and you increase the rate on that \$1.50 telephone to \$2.00. What happens? At the end of the month Mary and John once again talk over the budget and they find out that if they continue to keep that telephone, it will take a pair of shoes away from the baby, and therefore the telephone is disconnected. It is well known that utilities cannot pass the increase in taxation down to the ultimate consumer.

As to uniform taxation, that is something that I doubt very much will be attained. We have been discussing taxes since the creation of man, and probably will continue to the end of time. How-

ever, we should not only work along the line of getting a uniform method for the taxing of utilities, but we should work along the line of educating the public; of educating our assessors; of keeping our assessors in office long enough so that those men become intelligent enough to administer taxation along proper lines, and until that time comes the utilities will always in a measure stand more than their share of taxation.

CAPTAIN WILLIAM P. WHITE: One question involved here has not been spoken of yet. Railroads are subject to regulation, both as to national and state rates. On top of that, during the war, Mr. McAdoo took over the railroads and proceeded to equalize wages, so as to make the country safe for the Democratic party and to get himself nominated for the presidential office. We still are suffering from the results of that experiment. Today the labor board is discussing the question of wages. They granted increased wages, and now when it comes to decreasing wages in part, railroad employees are taking a ballot as to whether the railroads shall run or not, and if you think that is an extreme case, take the Arkansas and Missouri Railroad that went into the hands of a receiver and is now out of operation altogether on account of the action of organized labor in preventing the trains from being run by the government. A gentleman has spoken about the danger of government ownership. If the government of the United States owns the railroads, the states will cease to receive any income from those railroads, and will be called upon, as they have been in the last two years, or at least the inhabitants of the states, to make up a deficit due to that kind of organization. Now, you go home and tell your people about this, and when they talk about the taxation of public service corporations, just remember that those corporations have been put between the upper and nether millstones of government control. One has got to let up. The government of the United States has let up, on one end, but it is another institution which will have a tendency to bring it down.

S. G. CRAMP of Pennsylvania: Mr. Chairman and gentlemen, I should like to say that I have heard a lot of discussions about valuations. I think Professor Fairchild just about hit it when it comes to what is often spoken of as values. Without discussing or giving any reasons for it, I believe there are as many values of a public utility or practically anything else as there are purposes for which it may be made; I don't care what it is. If you had one million of them, whatever the purpose is, that is a separate valuation. I know very well of a railroad company which built a dock on a lake port. I am connected with that company. The river had to be straightened or had to be widened and dredged. It was a government stream. In order to do that the railroad company paid \$53,000 for real estate that had to be dug out. It had to be widened

on both sides. It cost something like \$570,000 to put that river in shape. The cost of that thing went into the cost of the dock. That is the cost on which that utility was entitled to earn revenue. For taxation it was not there. That is also true where in the construction of portions of the plant workmen are killed and damages paid. That goes into the cost of the plant. Then again the railroad may build and it must buy real estate, and there may be buildings and dwellings on that real estate. It has to tear the buildings down and pay for them and they are gone, and all that goes into cost of utility property. That is not part of the value for taxation.

MR. HOUGH: It is not there.

MR. CRAMP: It is gone.

MR. HOUGH: It enters into the value of the property.

MR. CRAMP: If the building is gone, you cannot value it. It is the cost of getting that thing. You talk about federal valuation: The federal government is making three values today, and whether the tax commissions are using them or not, I don't know, or whether they will or not. I should like to mention in connection with the ad-valorem values in some of these states what I have found since about 1910—I have been looking after taxes, although I have very little to do with it now—in some of the middle western states, for the Pennsylvania Railroad Company; I found it was the tendency for the commissions in these various states to labor diligently and work their heads off one year to fix a value for public utilities and that then they lie back on their oars and drift with the current and let it run for a decade. They permit it to crystallize and become rigid, and during those years changes may come about which renders the mode on which the valuation was made entirely inequitable. That is just what is happening now. In some of the western states when the original valuations were made, when the tax commissions were created, they assumed seventy per cent of the gross revenue to be operating expenses. That left thirty per cent, as an average, and they capitalized that at a certain figure, possibly eight per cent, and reached the value. I heard a lot of talk last night about the valuation of farm land and city property and rural property. I want to say in connection with the federal valuation of railroads, now being made, it was necessary to determine the value of the land owned by the carriers, that is, railroad companies, and to do this examiners went through the various states and determined the relation of the assessment of that land to its real value, among other things. This was obtained in a number of different ways, from people living on the land, through trust companies, insurance companies, who loaned money on that land, and by sales taken from the record, and I have yet

to see any of those states where that land is up to one hundred per cent value. It will range as low as ten per cent. One county that I saw was eighty-five per cent. Now, there are individual taxing districts where it may go up to one hundred per cent. I have claimed this before some of the commissions, that when a one hundred per cent value is fixed on a railroad and is allotted, under the ad valorem rule, to a taxing district, it must be equalized or it violates the Fourteenth Amendment to the Constitution of the United States. Now, if that is right, why don't you equalize it?

CHAIRMAN BLISS: The chair regrets very much that there is no further time for discussion of this matter. There is a gentleman here who has come a long distance, and he has a message for us, and I think that he should be heard for a few minutes—Mr. Saint of the tax commission of New Mexico.

J. E. SAINT of New Mexico: Mr. Chairman and gentlemen: I did not intend to say what I am going to say now, until later, but I am obliged to leave tonight for the West, and I have a message from Governor Meacham of New Mexico, extending to this conference an invitation to hold the next conference at Santa Fe, New Mexico. We feel in New Mexico that we are probably the last understood state in the Union. We are one of the baby states. We have had more to contend with probably, in organizing the state, than any state in the Union ever did have, because fifty per cent of our population are of the Spanish race. They come from a country that never imposes property tax, therefore they are not very much taken up with the property tax. But, I am not going to discuss taxation. I have heard a good deal of it.

I want to extend to you in behalf of Governor Meacham an invitation to hold your next conference at Santa Fe, and I have distributed quite a number of booklets, prepared by the historian of New Mexico, Ralph E. Cushing, probably the best-posted man on Spanish New Mexico history of any man in the United States. There is one more thing I want to say. You have all heard the word "gringo". We are all "gringos" in New Mexico I want to tell you, and it is very appropriate that it should be told here that the word "gringo" actually originated in New England, and I will tell you how it happened. During the Mexican War in 1848, New England sent some regiments of soldiers down into the Rio Grande. There was one regiment, I don't know which one it was, probably from the Green Mountain state, that had the usual home-folks song, and the chorus of that song wound up with something like this: "Green grows the grass in the Green Mountain state," or something of that kind, anyway. It was kind of a refrain that wound up the song. Those Mexicans down there, not being familiar with the English language, when they wanted to designate that regiment called them "gringos", because that was

as near as they could say "green grows", so that was the origin of "gringos", and all Americans in the Spanish-speaking countries are known as "gringos"; and now I want to say that I want all you "gringos" to come to New Mexico next year if you can.

MR. CRAMP: I should like to ask the gentleman from New Mexico if the bad liquor still comes over the line.

MR. SAINT: I am not giving away any secrets. I have a notion though—I was told the other day by a gentleman, that they had brought in an imported moonshiner from Georgia to show them how to make moonshine.

CHAIRMAN BLISS: I should like to caution the delegates to be here as promptly as possible at eight o'clock this evening, as we have a long and very important meeting. It will be our endeavor to get through with all of the work laid out on the program so as to finish Friday afternoon instead of Friday night, if possible.

[Adjournment of Session.]

## NINTH SESSION

THURSDAY EVENING, SEPTEMBER 15, 1921

CHAIRMAN BLISS: The meeting will please come to order. The Secretary, I understand, has no announcements to make at this time, but I will ask the indulgence of the conference for a few minutes, before proceeding to the appointment of a temporary chairman.

I suppose it has frequently occurred to members of these conferences, as it has to me, that our meetings always run smoothly; the programs are arranged; everything necessary is done; everything seems to go along without any hitch or trouble, apparently without effort on the part of anybody. Affairs of this kind, however, do not run themselves. Those of us who have attended many of these conferences, and are familiar with the early history of the organization, know very well the amount of time and attention required on the part of somebody to see that all of the various things necessary to be done are properly attended to.

The organization started in 1907, ran along for a while and, like all things human, it had more or less trouble. A reorganization, however, was effected and the organization has continued to grow and wax strong and become of more and more influence. This growth and this influence are very largely due to the untiring energy and skillful work of one man. You can very readily see that he does not even appreciate it himself, but all of the details of management of this organization have for a number of years devolved upon him and he has brought to the service of this organization, and through this organization to the country at large, a very valuable thing.

I suppose all of you are more or less familiar with the *Bulletin*, also that you all know that the digest at the back part of the *Bulletin*, one of the most valuable contributions to the legal-economic literature of the country, is compiled and the digests made by our secretary. You have all doubtless sent rough notes to the secretary, with the idea that they might assist in the compilation of the *Bulletin* and when the *Bulletin* comes out you find that they really were a very presentable article. And so it has gone along, year after year, until we have become accustomed to look at the generous service rendered by this man as a matter of course, and he renders it apparently in the same spirit. There is even more than

this. When a man puts his personality into his work it always shows, it always has its effect. While we all appreciate very much and very thoroughly, I think, the work of our friend, at the same time there is a purely personal element in the situation. We have all become used to this man, and in the process, while we are not very demonstrative about it and do not talk about it all the time, at the same time there has grown up in this organization a very deep feeling of friendliness and even affection for our secretary. And it is as a manifestation of this appreciation of the very valuable and distinguished services which he has rendered for us on the one hand, and, on the other, of this purely kindly and friendly feeling which we have for our secretary, that I am making these few remarks this evening; and if you will kindly step this way, Mr. Holcomb [applause] — I am very happy to be selected to present to you on behalf of your friends a visible evidence of our regard and affection for you as our secretary and for you as a man. [Applause.]

[Presentation of watch.]

SECRETARY HOLCOMB: This is no time, even if it were possible for me, to express myself adequately for this kind remembrance. It is not in my power to do it, and besides that I assumed that we were here to discuss bank taxation, and if I had known that that subject was not really to be discussed I should have managed in some way to avoid this delicate position in which I am now placed.

Really, I have always felt interested enough to do this work, without this beautiful testimonial of your esteem, but I thank you most sincerely for it, and I trust that we may continue together as we have in the past, attempting to solve some of these problems jointly, and satisfactorily, and make progress along the lines of rational, effective, honest and reasonable taxation.

I don't think, Mr. President, that I need say more at this time, and I therefore thank you again and thank you all. [Great applause.]

CHAIRMAN BLISS: The chairman for the evening will be one of our former presidents, Mr. Howe of Kansas.

SAMUEL T. HOWE of Kansas, presiding.

CHAIRMAN HOWE: The subject for discussion this evening is bank taxation as affected by the decision of the United States Supreme Court in *Merchants' National Bank of Richmond, Virginia vs. City of Richmond*, rendered June 6th, 1921. Before calling upon the speakers who are to discuss this question I wish to present a brief résumé of what I understand the law was, previous to this decision, with respect to the privileges of the states in taxing national banks.



Since the enactment of the federal law the federal supreme court has passed upon various questions arising under the law.

The meaning of the phrase "other moneyed capital" as used in the federal statute has been restricted by the federal courts to capital used in competition with the business of national banks.

In this respect the court has decided that savings banks, building and loan associations, and certain forms of trust companies are not in competition with national banks, and hence, that their taxation need not be a measure for the taxation of shares of stock issued by the banks.

It has been decided by the courts also that states may not tax national banks in either of the following ways:

By exacting a license or analogous tax.

By taxing any property of national banks, except their real estate.

By levying a tax on the franchise.

By taxing the capital of the bank *in solido* against the bank.

By taxing the shares of non-resident shareholders elsewhere than in the town or city where the bank is located.

The decisions hold also that states may not discriminate against national banks in any of the following ways:

By allowing only state banks to deduct from the assessment, capital, etc. which is invested in exempt securities.

By levying a different rate on national banks than on state banks.

By exempting from local taxation a very material part, relatively, of other moneyed capital which is employed in competition with the business of national banks.

Decisions of federal courts recognize the right of states to act affirmatively in the taxation of national banks as follows:

To tax their real estate as other real estate is taxed.

The federal law does not require that the assessed value of the real estate shall be deducted from the capital in determining the value of the shares, but that it must be deducted, if a deduction is allowed to other corporations in competition with national banks.

The federal courts have decided also that if the state law requires the taxation of the shares of stock and also of the real estate, without deduction of the latter, the same rule of taxation may be applied to national banks.

The states may tax the shareholders on the value of the shares, subject to the limitations of the federal statute.

They may require the bank to pay the tax levied on shareholders, as agent for the shareholders, even though state banks are not required to do so.

They may collect taxes by distraint that are levied on shares, and may enforce also the pains and penalties for non-payment.

They may assess the shares at their fair cash value, on the assumption that the bank will continue its business, and not at what they would be worth in case the bank should be wound up.

The federal supreme court has held that the par value of the shares does not indicate their value.

In valuing the shares the fact may be ignored that the capital or surplus is invested in property itself exempt, even if invested in United States bonds. This principle extends to bonds or stocks held that are themselves taxed in the state.

Real estate located in other states and taxed there may be included in valuing the shares.

The following provisions of law have been held to make no discrimination against national banks:

Exempting property held for charitable or religious uses.

Exempting mortgages, judgments, recognizances, and money owing on agreements to sell real estate.

Exempting shares of either railroad, business, insurance or mining companies.

Exempting municipal bonds.

Exempting stocks of corporations organized under laws of other states.

Allowing deduction of debts from solvent credits, when the shares of state banks are taxed the same as are shares in national banks.

Permitting unincorporated banks to deduct debts before determining the real value of capital employed.

By failure to assess other moneyed capital.

By prescribing a difference in the rate of taxation, provided that state banks and "competing moneyed capital" are treated in like manner.

By unintentional differences in valuation or mere mistakes in judgment.

By differences in the valuation of different classes of personalty.

It is very clear that the federal law, as interpreted by the federal supreme court permits the states to tax shares of national banks at their actual money value—which does not at all mean book value—and at the same time to tax all real estate owned, without deducting the same from the shares' value.

The federal court has had in view always the principle that national banks shall not be taxed higher relatively than state banks or other moneyed capital in competition with national banks.

Other points decided by the federal courts might be suggested, but it is not deemed necessary to now treat the question exhaustively, enough having already been shown to indicate clearly that federal law circumscribes and limits the power of the states to

legislate with regard to the assessment of capital invested in the business of banking. This is certainly true as to national banks, and if discrimination against state banks is to be avoided, both classes of banks must be treated similarly.

But the limitation so placed, as has been said already, has relation to equality of burden as a basic proposition. The federal law does not attempt to say what the burdens upon the shareholders of national banks shall be, but only that they shall be no greater than they are upon other moneyed capital in competition with national banks; the shares of state banks being included in other moneyed capital.

This résumé was prepared shortly before this decision of the supreme court, which has changed somewhat its attitude in respect to what is the meaning of "other moneyed capital", and that is the question that is up for discussion this evening.

The first speaker on the program is Arthur D. Hill, corporation counsel of Boston—Mr. Hill.

ARTHUR D. HILL of Boston: Mr. Chairman, ladies and gentlemen: It is with some diffidence that I address this gathering, but I want to begin by saying that I am in no sense an expert on taxation. I am a specimen of the small taxpayer, one of the shorn and not one of the shearers; and my addressing you is about as appropriate as it would be for a sheep to address the National Wool Growers' Association. [Laughter.]

The only reason that I am allowed the privilege is that I happen to be the corporation counsel of the City of Boston, and among the misfortunes which have fallen upon me in that capacity is to defend a suit brought by the First National Bank to recover taxes paid by them to the City of Boston. There are, to speak more exactly, four suits, covering four years, and the amount claimed is over \$2,000,000, which is a large sum for a small New England town! Now, your chairman has pretty well covered a large part of what I intended to say, by his excellent summary of the law, but the subject may be unfamiliar to many of you. I am certain it is unfamiliar to the ladies present, because I cannot imagine any woman poring lovingly over the law relating to national banks, unless indeed she is married to a national bank president, and even then I doubt if she would grasp the technical details of the subject, and because that is so, and because it is a difficult subject to take in all at once, I am going to restate some of what your chairman said.

Up to 1864 the states could not tax either the property or the shares of national banks at all. They cannot now tax the property of national banks, other than their real estate, but Congress in 1864 did authorize the states to tax the shares in national banks to the individuals who owned them, and that law, passed in 1864,

with some amendments which are not now material, is still the law today. It allows shares in national banks to be taxed to their owners by the states in which the banks are situate, with complete freedom, subject to only two restrictions. Those two restrictions are, first, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens, and, second, that the shares of a national bank association, owned by non-residents of the state, can only be taxed in the town or city in which the bank is situate. That second restriction is unimportant for the purpose of the present discussion, and the situation with which we are now confronted depends on the first restriction, that the taxation shall not be at a greater rate than is imposed on "other moneyed capital".

The practice in Massachusetts, and I believe it to be similar to the practice in most if not all of the other states, has been to assess the shares of national banks at their fair cash value, and to require the bank, as agent of the shareholder, to pay that tax. The method adopted has been for the local assessors—I am speaking now of Massachusetts, but I believe it to be merely typical of the general practice—to value the shares and then to levy a tax on them at the local rate. That was not the subject of any great amount of complaint in Massachusetts up to the year 1916.

Up to that time we had a general property tax, by which all shares in corporations organized outside of Massachusetts and all bonds were theoretically taxed at their fair value. Practically, of course, only a small number of them were ever so taxed, but in theory they were taxed just exactly as national bank shares are taxed, so that if a man owned five hundred shares of national bank stock, he paid at precisely the same rate that he did if he owned five shares of C. B. & Q. or of any other corporation.

In 1916 Massachusetts adopted an income tax law as a substitute for its tax on intangible personal property, and all income was subjected to a tax, varying from six per cent on the income from corporate shares or from bonds, to one and one-half per cent on income earned from various occupations. There were other details, but I shall not trouble you with them now. That of course made a change in the situation, for the new law did not apply to national bank stock. National bank shares continued to be valued just as they had been before and to be taxed at the local rate. The result of this was that in a large proportion of the cities and towns of the commonwealth, national bank stock was taxed at a somewhat higher rate than stock in other corporations organized outside Massachusetts, because the local tax rates were commonly high enough so that the local tax rate exceeded the six per cent on the income which was paid by the owners of shares in other non-Massachusetts corporations. Theoretically it might have yielded a lower rate on a national bank stock. If there had been,

for example, a national bank in the town of Orleans on the Cape, which at one time enjoyed a tax rate of three dollars on a thousand, I believe—although I am not a very good arithmetician—that the owners of that national bank stock would have paid lower rates than they would if they had been assessed at six per cent on the income; but in the great majority of cities and towns, in practically all of them where national banks were situate, the result of the change in the law was that national banks paid at a higher rate than the stock in other corporations organized outside Massachusetts. The Massachusetts corporations were taxed in a different way; and I do not need to trouble you with that. So, too, were the trust companies and other financial institutions organized under the Massachusetts law. But those laws had been held not to be discriminatory against national banks, because in substance they reached a substantially equal result. As soon as the new income tax law, however, became effective, and even before that, the national banks complained that it constituted a discrimination against them, and the question was raised before the legislative committee which had the preparation of the law in charge. That committee, however, believed, on the faith of a long line of United States decisions, that they could safely refrain from including national bank shares in the class of property which was subjected to the income tax. It had been decided in a large number of cases, of which the leading case was *Mercantile Bank v. New York*, reported in 121 U. S. Supreme Court Reports at page 138, that “moneyed capital”, as used in the statute, did not mean all invested capital but only such invested capital as was used in business substantially similar to that carried on by national banks, the court saying in substance that the primary object of the national bank law was to protect the national banks from discrimination by the states in favor of other business which competed with them, and that any other class of business might be taxed in a different way without violating the provision of the statute. That, as your chairman said, in his memorandum, had been reaffirmed in a great number of decisions, holding that savings banks, trust companies, and other similar organizations were not competitors of national banks, so as to require substantially identical treatments. And our authorities believed that under the principle laid down in those decisions, the national bank tax could be levied just as it had been before. The national banks, however, not unnaturally took a different view and brought to test the law the suit which I am now engaged in defending. They claimed in substance that they were discriminated against, and they based their chief claim upon the existence, in Boston, of a considerable number of firms and individuals engaged in the business of so-called private banking.

There are in Boston some seventy private bankers, said to have

a capital of about twenty-five million dollars, and the national banks allege that they are competitors of the national banks. Whether they are or not is a question of fact which has not yet been determined. The case is before a Master and the hearings are not concluded. The view which is taken by the city and the state is that while there is some overlapping in the business, there is no substantial competition; that the so-called private bankers are in reality chiefly engaged either in the stock brokerage business, or in the business of underwriting securities, which is outside of the scope of the activities of national banks, or in the business of foreign exchange, which is only a small part of the business of national banks, or in other activities, where they occasionally encroach to small degree on the business of national banks, and that this business does not constitute any substantial competition. It has been reaffirmed, I repeat, over and over again, in the cases, that the only moneyed capital which is within the provisions of the law is moneyed capital which comes into natural and sensible competition with the national banks. Recently, however, in the case of the Mercantile Bank in Richmond, the Supreme Court has apparently widened the view which it had hitherto taken of the meaning of the term "moneyed capital". In that case a law of the State of Virginia imposed a tax on intangible property at a lower rate than that which was imposed on the shares in national banks. The Virginia law was not an income tax law; it was a so-called three-mill tax; the imposition, that is, of a tax on intangibles at a low rate, with a view of luring them out of their hiding place, and making it pleasant for them, or relatively pleasant for them, to be taxed. But, it is difficult to see that there is any great distinction in the principle of the two cases; and certainly we had supposed that such a tax as the three-mill tax might be imposed on ordinary investments, without being considered as a tax on moneyed capital, within the prohibition of the law. There had been indeed a decision to that effect in the Court of Appeals for the Fourth Circuit, in the case of the National Bank of Baltimore, 100 Federal Reporter, at page 24, where a Maryland law, similar to the Virginia law, had been held not a violation of the restriction imposed by the United States statute. In the Merchants National Bank of Richmond case, however, the court held that because some of the investments of individuals, which were subject to the low rate of taxation, might be engaged in business, such, for example, as loaning money, which came in conflict—in competition—with the business of national banks, and because in that particular case there was a showing of such competition relatively material in amount, the law was a discrimination, and it allowed the national bank to recover the taxes which it had paid. Just how far that decision goes, just how far it will be followed by the court in cases involving other state laws, it is

of course impossible to say. We shall contend when our case gets to Washington, that there is no material competition between private capital and that invested in national banks; but it is impossible, until a decision has been reached, to say with certainty whether we shall succeed. And if the Richmond case has as broad a scope as it appears to have on its face, and if it is impossible under the present law for any state to impose an income tax or a three-mill tax upon intangible property, without bringing in national banks under the precisely same rate of taxation, a very serious question is going to arise in the state finances.

I think that that is all that I need to say to lay the question before you, and that I conceive to be my only function this evening, except to answer any question that I am able to answer about the particular litigation which I have in charge.

**CHAIRMAN HOWE:** The next speaker is Thomas B. Paton, General Counsel of the American Bankers' Association—Mr. Paton.

**THOMAS B. PATON** of New York: Mr. Chairman, ladies and gentlemen: It is somewhat of a task to follow a speaker who opens with about the same remarks that I had intended. I had also intended to say that I was not a tax expert and I may prove to be something like the college boy who, in regard to his examination in mathematics, attempted to explain by saying that he did not know very much about the roots but he was way up in the higher branches. I am limited to twenty minutes, and I assure you I shall not be longer.

Notwithstanding the fact that certain of the decisions and the law have already been explained to you, it may be of value, for a brief moment, to go into the underlying history of this national statute. The subject this evening is the national statute which limits and restricts the states in their taxation of national banks, and the effect of a recent decision of the supreme court of the United States in interpreting that statute, upon the tax systems of the various states. Now, as has already been said, it was early determined in the judicial law of our country that the states could not tax a bank created by the national government. In the old case of *McCulloch v. Maryland*, in 2 Wheaton Reports, the State of Maryland taxed the bank of the United States in Maryland, and Justice Marshall held that the power to tax is the power to destroy, and that while the state might tax the real estate of the bank as other real estate was taxed, it was beyond the power of the state to tax the bank, it being an instrumentality of the national government. So, when the national bank act came to be enacted in 1864, that old decision, or the principle of it, was virtually incorporated, to the effect that nothing in the act should prevent the states from including national bank shares in the valuation of the personal property of the owners of such shares, subject to the

two restrictions which have been mentioned, one of which was that the states could not tax national bank shares at a greater rate than other moneyed capital in the hands of individual citizens of the state. The reason of that, as explained in the early cases, was that there was danger that these new institutions might be oppressively taxed by the states. They were not favored, and to safeguard them against unequal and unjust taxation, this provision was incorporated. There have been repeated decisions of the supreme court of the United States, as you have been told, judicially interpreting the meaning of that protective provision. It has been held to only protect the national banks against over-taxation, where the other moneyed capital in the hands of individual citizens was competing. Where it was non-competing there was no discrimination, although the other moneyed capital was not taxed at as great a rate as national bank shares. But the recent decision, the latest decision, in the case of Merchants National Bank of Richmond, holds, as you have been told, that there is a discrimination where intangibles—that is, notes, bonds and other evidences of indebtedness for money loaned—in the hands of individual citizens, are taxed at a lower rate than shares of national banks, those intangibles being to a relatively important amount, in competition, in the loan market with national banks.

That decision, while it has been deemed revolutionary, does not, as I understand, establish any new definition or any different principle of taxation than was decided, nearly thirty years ago, in 1892 in the case in 105 United States, the Evansville National Bank case. In that case intangibles in the hands of individual citizens were taxed and those citizens were allowed to deduct their debts from the valuation, which deduction was not permitted in the case of the holders of national bank shares, and the supreme court of the United States held that the Indiana law was invalid for that reason. The only distinction between that case, decided nearly thirty years ago, and the present case is that in that case the discrimination was in the allowing of the holders of intangibles to deduct their debts, while in the present case it was in allowing them to be taxed at a lower rate.

Now, as to the Merchants National Bank decision, whether it is a new departure or confirms prior established law; what is its effect on the tax systems of the different states? That is the question you are here to consider, and I have been endeavoring to find out from bankers their views upon the question. In certain states where there is no classification of property, where under the constitution all personal property must be taxed at a uniform rate, that decision I believe will have no material effect. The chief complaint in those states, as I gather, is that personal property to a large extent escapes taxation altogether, but that is no discrimination against national bank shares. There is another



complaint, that personal property, while taxed at the same rate, is undervalued, is assessed at a lower valuation. In such case there is a discrimination, and wherever the facts can be proved, it does not require this recent decision to obtain relief. That relief could always be obtained under prior decisions of the Supreme Court. But the Merchants National Bank decision does affect the tax systems in the states where there are classified systems of taxing property, as well as in the income tax states; and it puts the systems in many of those states in a very serious situation, as I understand. If I may be permitted, I should like to tell a little story here. Down in Georgia there was a negro who was guilty of an atrocious crime, and was caught and was hung, and those who hung him to the tree there put up a sign, as they did not want him to be cut down, "*in statu quo*"; they wanted everybody to let him remain as he was. Certain of the neighbors came along and they read that sign and could not make out what it meant, could not understand Latin. Finally the justice of the peace came along—he knew everything—and they wanted to know from him what that meant. Well, he hemmed and hawed for a while, and finally said, "Why, that means he is in a hell of a fix." It seems to me that this recent decision, or this new interpretation of the law, leaves the tax systems and the officials in a number of these states *in statu quo*. It has been the habit, in a number of the classification states, to tax at a small rate, like three mills, these intangibles, and there is a good deal of justice in it; and they have done so on the theory that this class of property was not competing with national bank capital; and it has also been the habit in these new income tax law states to exempt the holders of intangibles from personal property tax, and tax them on their incomes, which results in a less rate being obtained than is obtained from the holders of national bank shares. What is the result? In New York I just read, and I guess you all know, in addition to this Boston case that has been brought, a suit has been brought by national banks in New York, where there is an income tax, and the holders of intangibles are exempted and they are taxed on their incomes, to recover five million dollars back taxes. In North Dakota there is a suit pending, similar to the Virginia case. Out there the suit has been decided in favor of the banks similarly to that of the supreme court in the Merchants Bank case, that there is discrimination against national bank shares. But in North Dakota the banks are a little lenient. The secretary of the North Dakota Bankers' Association says:

"As has been repeatedly stated, the national banks of North Dakota do not want to evade taxation, and stand ready to make an equitable adjustment with the state authorities for the taxes against national bank shares for 1919, 1920 and 1921. If such equitable adjustment cannot be reached, then

of course there can be no reason why the banks should not take advantage of the situation outlined above."

Here is another from Montana, better yet: In Montana they have a classified system: Class 5—all moneys and credits, and class 6—bank shares. Under class 5, the intangibles are assessed at seven per cent, and under class 6 bank shares are assessed at forty per cent. That, of course, is discrimination under this decision, but this is what the secretary of the Montana Bankers' Association says:

"In view of the fact that in levying taxes upon bank stock in Montana, both state and national bank shares are assessed on the basis of forty per cent of book value, it was deemed by the bankers of this state that the present assessments are fair and equitable, and that no effort would be made to take advantage of the recent decision holding that national bank shares cannot be assessed at a greater proportion than other moneyed capital, although in Montana moneyed capital in the hands of individuals is assessed at seven per cent of actual value.

"The Montana Bankers' Association has a membership of every bank in the state, and on account of the fact that the biggest and best bankers have always given their attention and energy to association affairs, we have been able to have enacted equitable laws covering the supervision of state banks and the taxation of all bank stock."

That shows in a way that bankers want to be fair. As I say, the tax systems in certain states do not square with this interpretation of the tax statute by the supreme court, and either the tax systems of the states must be changed or the federal statute must be amended. Now, it is a subject of discussion which is most equitable and fair all around.

The tax commissioner of Minnesota, Mr. Lord—I don't know whether he is here or not—had prepared and forwarded to Senator Nelson of Minnesota, who has introduced it in the Senate, the Nelson bill, and the same bill has been introduced in the House by Mr. Volstead, which proposes to amend this federal statute, by substituting for the phrase "other moneyed capital in the hands of individual citizens", the phrase "other moneyed capital used in banking".

Now I, in my official position, desired to obtain or know the attitude of the American Bankers' Association on that Nelson Bill, and I sent communications to different bankers in different parts of the country, and I have found a great difference of opinion, and in what I say now I cannot speak officially for the American Bankers' Association. I don't know what the attitude of the association towards the Nelson Bill will be. A convention of the association will be held the first week in October in Los Angeles

and doubtless this subject will come up, and then the attitude of the association will probably be determined. But I can say this personally, and not officially; that a few of the bankers, in a few states, like in Maryland where they tax bank stock, I believe, at one per cent, and tax intangibles something like in Virginia, do not oppose but would rather favor that bill. I say that not as an official of the Bankers' association. I say it personally. In Minnesota they are fairly well satisfied and in one or two other states, but in the greater number of states the strong sentiment is that the national statute should not be amended, and that it is necessary to the protection of national banks as compared with other competing capital, that that statute should stay as it is, and that banks, national and state, should not be put in a class by themselves—that is to say, if the tax on national banks is no greater than the tax on state bank shares, that there is no discrimination—for the reason that in some states there is a fear, based on satisfactory evidence, that the banks as a whole are discriminated against as compared with other property. That is the evil. Now I have been warned that my time is up, but there is one communication I have from Utah, and I believe the attorney general of Utah is here. The writer says: "I believe in the taxing of intangibles at a lower rate than national bank shares, but I do not believe in the amending of that law in the way of the Nelson Bill unless there is a limitation put on it, and I would suggest that if the national statute is amended, that a limit of one per cent or some equivalent amount on the taxation of national bank shares be put on it."

Now, this problem of course is all in the realm of discussion yet. Thank you, Mr. Chairman.

GEORGE E. WALLACE of North Dakota: Mr. Chairman, ladies and gentlemen: Now that the subject of assessment of bank stock is being fully discussed throughout the nation, it makes some of us wonder why we had not seen the point before. I presume that a good percentage of the men in this hall tonight are learned in the law. If we had taken the time to have studied that federal statute carefully, we would have observed the words "in the hands of individuals", and that to me is the secret of the whole subject. A few years ago it was very fashionable in various states in the Union to pass laws which provided for the classification of property. The thought which induced the passage of most of those laws was that intangibles would be treated different from tangible property on the well-known theory that intangibles are easily hid, and if a high rate of taxation is placed upon intangibles, history shows that they will go in hiding, and will not bear their portion of the tax. So, when that was in the height of fashion, we in North Dakota also passed that sort of a law. I

believe we borrowed that from our neighbors on the east, and fixed the rate at three mills on the dollar. The result was a success from the beginning. Whereas we had been assessing about a million or a million and a quarter dollars' worth of intangibles under the high local rates, the first year after the law had been changed the enrollment was considerably more than one hundred million dollars. Then as time passed on we enacted an income tax law and repealed our moneys and credits law. So, as defined by the Justice of the Peace, North Dakota is *in statu quo*.

As was stated by the former speaker, an action was brought in the federal court to determine the legality of a tax against one of the Fargo banks. The matter was tried in the district court and in the circuit court of appeals for that district. The judges of the circuit court of appeals held up the decision for considerably more than a year after the matter was submitted. I had no idea of the pendency of the Virginia case; and of course I had some scruples about writing to the judges myself, asking them to hurry up. So counsel on two sides performed that task together, but we did not hear anything from them then until after the Virginia case was handed down, and then in the course of three, four or five weeks the chicken got the axe. But we are not through. The case is going to the supreme court.

Now, the theory that I am going to present to the supreme court is one that has not been touched upon tonight. I shall attempt to show the supreme court that the incidence of the tax on shares of national bank stock in North Dakota is not greater than that upon moneyed capital invested in shares of domestic corporations or upon the capital of private persons engaged in performing the same functions as that of banks. I hope that the supreme court won't think that I am getting too technical and going into the economics too strong. In the district court of the United States, the judge there took it seriously, because he said in a memorandum decision handed down, after the incidence had been thoroughly argued to him: "In view of the considerations elaborated by counsel for the state, it cannot be successfully claimed by the banks that the rate of tax upon the moneyed value of their shares is necessarily higher than the rate would be upon a private citizen, whose moneyed capital is performing the same functions as that of the banks." And, having gotten first blood that far, we are somewhat encouraged to go on and see what the supreme court will say. Now then, I won't bother you greatly about the incidence, but I do want to call your attention to just enough, so that perhaps some of the speakers who preceded me might take this cue and put up a successful defense in Massachusetts and some of the other states.

Corporations in North Dakota are taxed on all their property, both real and personal, of course. We have also there the stock

form of taxing the corporate excess, and that law has been upheld by a recent decision of the supreme court of the United States in a case tried last year. Now, that particular law does not affect national banks, so that national banks in the state cannot be taxed on the corporate excess. Ordinary corporations in the state and private individuals in the state are assessed on their income. The income tax law of the state was borrowed heavily from Wisconsin and the United States. The income tax law, as you all well know, does not affect national banks. We also have in that state the capital stock tax, similar to that which is now in force as a federal statute. As you well know, that law cannot apply to national banks. As I said before, we had in the state a money and credits tax, which was in force in the taxing year in litigation. The money and credits tax provided that both corporate interests and individuals should be taxed. The money and credits tax of course did not apply to national banks. The income of the corporation, as I have stated, is subject to the income tax. We have rather an anomaly in North Dakota in this; that the dividends of corporations are also subject to the income tax in the hands of the holders of the shares of stock. Now then, the question is, what about the incidence? In the court below the record shows that a hypothetical case was put to the court on the subject of the incidence, and it is parallel with the conditions of the bank, or rather with the amount of money invested in the bank, which brought the action, and this is what the record shows:

"On the other hand, assume that an individual citizen of the City of Fargo devoted eighty thousand dollars to establishing a business in loaning and reloaning money for profit, and discounting negotiable instruments for profit; assume that he invested thirty thousand dollars of this in a business building and fixtures and devoted the other fifty thousand dollars to a revolving fund; assume then that he borrowed seven hundred thousand dollars and has loaned or invested in negotiable securities an equal amount—that is, he borrows money and uses that in his business, and uses it all. Under these conditions he would be assessed three mills on the dollar on his seven hundred thousand dollars of bills receivable and negotiable paper, as well as three mills on the dollar upon his revolving fund. This would make a total aggregate of seven hundred and fifty thousand dollars. Now, on this his total tax burden would be two thousand two hundred and fifty dollars in that city, or four hundred and sixty dollars in excess of the tax on this national bank."

In brief, a private individual under the laws of North Dakota would be handicapped by a tax burden more than twenty per cent greater than that upon a national bank, assuming the facts to be true as set forth in the record.

This case is now in the process of appeal, and of course, being a revenue measure, the supreme court of the United States will advance it for hearing. I do not know, of course, what the outcome of that litigation is going to be. In some cases the supreme court of the United States has rather squinted at the theory of the incidence of a tax, although they have not called it by that name, yet that is what they meant. But, in my researches I have not been able to find any case which has been presented to that court which brings out the incidence to the extent that it will be brought out in this case. Now, our money and credits tax is repealed. The tax year over which we are litigating is the year 1919. That tax is unpaid by the national banks, as well as the tax of subsequent years. They have offered in the federal court to pay three mills on the dollar. The circuit court of appeals has included that in its judgment, although had the case been fairly and squarely presented, without the offer to do equity, the chances are the court simply would have set the tax aside. Then, for the year 1918, I do not see that we have any hold at all on the banks, unless, as I say, I succeed in getting the supreme court to distinguish between the North Dakota case and the Virginia case. As was stated by a former speaker, the banks of the state have made an offer of compromise. Some six months ago they took the matter up with me to know what I would agree upon on the question of compromise. The majority of the bankers of the state do not wish to avoid paying their share of the public burden, and while if we cannot make a distinction between the North Dakota case and the Virginia case, there is no law which will tax them in that state; yet they are of the frame of mind that they want to be placed upon the tax list and to pay something towards the running expenses of the state government. I believe that is all I have to say to you tonight. It is going to be interesting to watch the progress of this subject, and I firmly believe that the solution perhaps is, as has been suggested here, the passage of the Nelson bill, changing the law in such a way that state banks and national banks may be taxed alike. I thank you.

CHARLES J. BULLOCK of Massachusetts: Back in 1907 when I undertook to draw in Massachusetts a law providing for a three-mill tax on intangible property, I took an afternoon or two off and looked through those bank cases, and as I read them I had an uncomfortable feeling that a three-mill tax might make trouble in Massachusetts. I was not a lawyer and therefore I called for legal advice and secured it. Eminent counsel, who studied the matter with great care, rendered an opinion to the effect that the term "moneyed capital" had been practically narrowed by the decisions of the supreme court during the previous dozen or fifteen years, so that it in effect meant the capital of state banks

or other state institutions, such as trust companies, if they were in the commercial banking business and competing with national banks. On that assurance we went ahead with our plans for a three-mill tax in Massachusetts, and later laid our plans for a state income tax.

As I am not a lawyer I shall express no opinion as to the present situation, except that even a layman can see that states having a flat tax on intangible property or an income tax, like those prevailing in Massachusetts and New York and Wisconsin, are left in a difficult position. But this thought has occurred to me during the discussion this evening: It happens that the circuit court of appeals of the United States once took judicial notice of the fact that state laws providing for the taxation of intangible property at a uniform rate brought about, not uniform taxation of such property, but almost uniform and universal evasion of taxation of such property. That case, I think, is *National Bank of Baltimore v. City of Baltimore*, and in that case the court touches on the evil of the personal property tax as applied at a uniform rate to intangible property. I recall definitely that the court states that the law in such cases does not fall upon the property of the well-to-do, but only upon the property of the unfortunate, the widow and the orphan, and all that sort of thing. The practical situation is very different from the technical legal situation. The practical situation is that if the states maintain a uniform system of taxation under which intangibles are bound to escape taxation altogether, they are all right and there is no discrimination against national banks; but if they adopt a three-mill tax or an income tax and bring those securities by the hundreds of millions upon the tax rolls and secure from them much more revenue than they ever did secure under the property tax, or ever could secure, so that practically they bring about a greater equality between the moneyed capital of the individual and the moneyed capital of the national banks, that in that case there is discrimination. That is the practical situation.

CHAIRMAN HOWE: The secretary will read a resolution.

SECRETARY HOLCOMB: Resolved, that this conference reaffirm the position taken by the thirteenth annual conference on state and local taxation at Salt Lake City on September 10th, 1920, with reference to opposing the exemption from income taxation of the salaries of all public officials and of the interest on future issues of federal, state or municipal obligations, and hereby recommends the submission to the 67th Congress and the ratification by the states, of an amendment to the Constitution of the United States which will permit the principles thus stated to be embodied in our national income tax law.

CHAIRMAN HOWE: Referred to the committee on resolutions.

J. VAUGHAN GARY of Virginia: Mr. President, ladies and gentlemen: Shortly after the decision of the supreme court in the Merchants Bank case was handed down, Mr. Holcomb wrote to me and suggested that it would be well to have a discussion of the effect of the case at this conference, requesting that I suggest some one to lead this discussion, as the case had arisen in Virginia. I very promptly wrote back to Mr. Holcomb and explained that under our system of segregation or partial segregation in Virginia, this case had not involved a state question. In the year 1915, the year which was involved, the State of Virginia imposed a tax of thirty cents on the hundred on shares of bank stock. That was the state tax. The same statute, however, which imposed that tax, authorized the localities to impose a tax not exceeding one dollar and forty cents. The banks paid the state tax and entered no protest. They did, however, contest an ordinance of the City of Richmond which imposed a one dollar and forty cent levy. I might state that most of the cities—practically all of the cities, if I am not mistaken—during that year imposed a levy of practically one dollar and forty cents. Some of the counties did not impose levies as high. Some of them did not tax bank stocks at all, in which cases bank stocks were being taxed in those particular counties at a considerably less rate. I might say that that involved merely a city question, and I told Mr. Holcomb that for that reason the handling of the case had been entirely in the hands of the city authorities, and I suggested to him that he request the city attorney of Richmond or his assistant to appear before this conference and give the conference the benefit of their views on the subject. Unfortunately, however, neither of these gentlemen could attend, and I agreed to simply state as well as I could and explain to some extent the law in Virginia that was involved in this particular case.

Now, as I said, the state tax during this year 1915 was thirty cents on the one hundred dollars. The localities, however, or the City of Richmond levied a tax of one dollar and forty cents. At the same time the segregation act which had segregated intangibles—partially segregated intangible property—to the localities, levied a state tax of sixty-five cents on the hundred on bonds, notes and other evidences of debt, claims whether secured or unsecured, as a matter of fact on all intangible property, and limited the localities to thirty cents on the one hundred on that particular class of property. That made a state and local tax of one dollar and seventy-five cents on the hundred on bank stock, and the total state and local tax of ninety-five cents on the one hundred dollars on intangible property. The bank appealed from the ordinances levying the one dollar and forty cent tax, and the result of the



decision is well known. The supreme court of the State of Virginia took the position taken by Mr. Wallace, as shown by the following extract from the decision:

"Adverting briefly to the contention that the construction we are disposed to place upon the segregation act and the city ordinance is in conflict with section 5219 of Revised Statutes of the United States, in that the tax of \$1.40 on the \$100, on the shares of bank stock is a higher rate than is assessed upon other 'moneyed capital in the hands of individual citizens of the state': Obviously the general purpose of the federal statute is to prevent discrimination by the states in favor of state banking associations against national banking associations; and no such discrimination is suggested or shown from this record to exist.

"In 9 U. S. Comp. Stat. (1916), title 'National Banks', at p. 11993, note 29, it is said: 'Moneyed capital.—The purpose of this section is to prevent unjust discrimination against United States banks, so that the phrase 'moneyed capital' used therein means capital engaged in the operations of banking, which is used as a source of profit, so that act N. Y., July 1, 1882, p. 312, declaring that the stockholders in banks organized under the authority of the state or United States shall be assessed for the value of their stock, was not void under this section, because the assessment roll showed that the securities of life insurance companies, the stock of state corporations, the deposits of savings banks, the stock of trust companies, and companies created outside of the state and owned in the state, virtually escaped taxation, since such property, excepting that of savings banks and trust companies, was not 'moneyed capital in the hands of individuals' as contemplated by this section.'

[Citing a number of cases.]

"These decisions of the supreme court of the United States (and authorities might be multiplied on the subject) show that the fundamental grievance of defendant in error, that the rate of tax imposed under the segregation act and the ordinances of the city, upon the shareholders of banks constitutes 'a gross and illegal discrimination against that species of property as compared with all other moneyed capital,' is groundless."

So that was the opinion of the supreme court of the State of Virginia which the supreme court of the United States declared erroneous—and so far as I am able to judge, the last decision of the supreme court is very far-reaching—in that it held that no discrimination whatever could be made between moneyed capital—which they defined as bonds, notes, and other evidences of debt, in the hands of individuals—and bank capital.

I might state, however, that while this case arose in Virginia, Virginia is not as badly *in statu quo* as some of the other states in

the Union. Since 1915 the legislature has greatly reduced the rate upon bank stocks, and they have found occasion, or rather have experienced the necessity on two occasions, in 1918 and in 1919, of levying special taxes on all classes of property, including intangibles, so that at the present time the combined state and local tax on bank stocks is \$1.25, whereas the combined state and local tax on intangibles is \$1.10, a difference of only fifteen cents.

Now, I might state, so far as the City of Richmond is concerned or the Merchants National Bank case is concerned, that the case has not been finally terminated in Virginia. There seems to be some confusion as to the exact meaning of the supreme court. As stated, the segregation act had limited the localities to thirty cents on the one hundred dollars on intangible property, at the same time imposing a state tax of sixty-five cents. It had levied a state tax on bank stock, however, of only thirty-five cents, and allowed the localities one dollar and forty cents. Now, the supreme court of the United States simply said that the bank stock was taxed at a higher rate than intangible property, and therefore the tax was illegal. The question has arisen in Virginia whether the City of Richmond is limited to the thirty cent tax which they were permitted to impose upon intangible property, or whether they could impose the difference between the thirty-five cents state tax on bank stock and the total of ninety-five cents tax on intangible property; in other words, whether they were limited to the thirty cent rate or to a rate of sixty cents for that particular year. The rates vary for the different years. The supreme court of the State of Virginia handed down a mandate in which they stated that the City of Richmond was limited to thirty cents. There is a big situation entering there. During that year the only rates that were authorized by the City of Richmond were a rate of \$1.40 on bank stock and a rate of thirty cents on all other stocks, stocks in corporations. The banks acknowledged that if they were not subject to the \$1.40 tax they were subject to the thirty cent tax, and it is possible that the supreme court will hold, I think, that inasmuch as the City of Richmond did not have a law during 1915, taxing bank stock at the sixty cent rate, if they taxed it at all they must fall back on the thirty cent rate; but I do not believe personally that the decision goes to the extent of saying to the states how they shall segregate their property. In other words, I believe that the state could tax intangible property for sixty-five cents and allow the localities to tax bank stocks at sixty-five cents, so long as the total state and city rate was not exceeded in each case. Then I think the tax would be legal. That question has gone back to the supreme court on a decision to rehear, filed by the City of Richmond, and is still pending. The outcome of it, of course, no one can judge; but so much for the actual decision. As I say, the decision does not affect the state of V

course, I mean as to the future. It very materially affects the City of Richmond, which will probably vote to refund at least in the neighborhood of four or five hundred thousand dollars on these back years for taxes, because they cannot change their laws to meet these conditions. Then too, of course, it is likely to become very material in Virginia at any time that they desire to lower that intangible rate. I can see throughout the state a general feeling now that the intangible tax rate, especially with these special taxes which have been added, is getting high, and there was a decided effort made at the last meeting of the legislature to adopt a tax similar to the New York stamp tax, which was abolished when the income tax was adopted, placing a very low rate of taxation on this class of property. I understand there is going to be another effort to adopt that tax at the next legislature. If that is true and it is adopted, then naturally the taxation of bank stock must fall with it, and the same rate must be applied.

Now, much as I would like to see North Dakota win its case, and the City of Boston, and while I do not know the facts—the facts may distinguish those cases from the one under discussion—I do believe that the decision in this case is very far-reaching, and I believe that if the supreme court stands by the decision in the next case that comes up, they must say that you cannot levy a higher rate than you do on other intangible property. Therefore, the only remedy that I see in the matter is the remedy of a revision of the statute. It has occurred to me, and I simply present this as a thought to the conference, that the main reason—as certainly a great many who favor the classified property tax, as Dr. Bullock remarked, have thought—that the purpose of the federal statute was to prevent the states from discriminating against stocks in national banks, in favor of stock in state banks, and for that reason Congress allowed the states to tax bank stocks with that one exception as to the rate. Now, personally, while there have been some very strong sentiments expressed at this meeting against the legislatures and considerable distrust has been expressed, I do not share the fear of state legislatures which evidently is felt by some other members of the conference. I believe that the states can be trusted to tax bank stock fairly. Certainly the experience in Virginia has demonstrated that fact. As I stated—and this was without any decision or any interference from the federal law whatever—of their own volition the state legislature in Virginia reduced the total rate on bank stock at various times from \$1.75 in 1915 to a total county and state rate of \$1.25 in 1921. Now, whatever prejudice may have existed in the states against national banks at the time this legislation was enacted, I believe it has passed away, and I believe that the state legislatures can be safely entrusted at the present time to treat national banks fairly. Therefore, I do not see any reason why

even the restriction should be placed upon the state of taxing these shares of stock. If some other method of taxing banks would fit in better with the general system of state taxation, I see no reason why the states should not be allowed to adopt that method. I see no more reason for limiting them to a tax on the shares than for limiting them in any other way. It seems to me that the states, if they can be trusted to tax bank stock, can be trusted to tax the income of the bank, or to tax them in any other manner that would fit in with their systems of taxation, so long as they do not discriminate between state and national banks, or, if you please, even individuals engaged in the banking business. I believe that the federal government could safely leave that to the states, and I do not believe that any more harm could come of a provision of this kind than would come of a provision allowing the states to tax federal securities and allowing the federal government to tax state securities, which has been recommended by several committees of this association. Therefore, I would suggest personally that the section be amended so as to allow the states to tax banks in any manner, so long as they do not discriminate between state banks and national banks, and I believe that the legislatures of the various states may be well trusted to tax them fairly and equitably. [Applause.]

MARTIN SAXE of New York: Mr. Chairman and gentlemen of the conference: At the request of Mr. Holcomb, when he prepared his program and included the subject of bank stock taxation, I put together a few observations arising out of a cursory study which I made of the situation from the standpoint of New York. Let me tell our friends from Virginia and North Dakota and Massachusetts, that in New York we are also beginning some litigation to test the question, and so I shall briefly review the taxation of banks in the City of New York.

## TAXATION OF BANKS IN THE STATE OF NEW YORK

MARTIN SAXE

Former President New York State Tax Commission

Since 1901 banks in the State of New York, both state and national, have been taxed under a special law, at a rate uniform throughout the state, of one per cent on their capital, surplus and undivided profits, without deduction for the value of their real estate, and without deduction to individual shareholders for personal indebtedness. In order to comply with the federal statute, the assessment is made against each shareholder upon the value of his shares, ascertained as indicated, the tax being paid by the bank on behalf of the shareholder.

This statute has been attacked in the courts, but was upheld by

the state court of appeals and the United States Supreme Court, on the general ground that the tax burden thus imposed upon the capital invested in national banks was not heavier than that upon other moneyed capital, which was either taxed by special methods or was liable to the ordinary personal property assessment.

In 1919, however, a state income tax was enacted, applying to individuals and modeled upon the federal law. The income tax was urged as a substitute for the personal property tax, and to carry out this idea, certain intangibles were exempted from local assessment and taxation. Section 352 of the Tax Law, slightly changed in 1920, and part of the income tax article, reads as follows:

"§ 352. Exemption of certain personal property from taxation. The taxes imposed by this article are in addition to all other taxes imposed by law, except that money on hand or on deposit with or without interest, bonds, notes and choses in action and shares of stock in corporations other than banks and banking associations, owned by any individual or constituting a part of a trust or estate subject to the income tax imposed by this article, shall not after July thirty-first, nineteen hundred and nineteen, be included in the valuation of the personal property included in the assessment-rolls of the several tax districts, villages, school districts and special tax districts of the state."

The Tax Law was further amended in 1920 by the addition of a section which emphasized and enlarged the exemption of intangible personalty, and which reads as follows:

"§ 4-a. Exemption of intangible personal property. Notwithstanding any provision of this chapter, or of any other general, special or local law, intangible personal property, except shares of stock of banks or banking associations, whether referred to as personal property, capital, capital stock or otherwise, after June thirtieth, nineteen hundred and twenty, shall be exempt from taxation locally for state or local purposes. This exemption shall be in addition to all other exemptions of personal property from local taxation, whether based upon the character, ownership or amount of property. The term 'intangible personal property', as used in this section, means incorporeal property, including money, deposits in banks, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt."

Both of these sections, it will be seen, specifically except the shares of national and state banks from their operation, leaving such shares taxable as before, at the rate of one per cent on their principal value. The income from such shares is also taxable, as part of the income of the shareholder, in the same way as other income, the rates varying from one to three per cent, according to the aggregate amount.

A number of banks, both state and national, have brought proceedings to set aside the current local assessment of their shares as wholly illegal and invalid. The national banks rest their case on the state Tax Law, and also on Section 5219 of the Revised Statutes of the United States, which is the only authority whereby the states can tax national banks, and which provides that in taxing their shares

“the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.”

The state banks rest their case, of course, upon the state tax law only, which, following the federal statute, provides that in assessing the shares of both national and state banks,

“the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of the state.” (§ 24, Tax Law)

The claim made by the banks is, that the intangible personal property which is wholly exempted (so far as its principal value is concerned) by Sections 4-a and 352 of the New York Tax Law, comprises all the items of property embraced in the term “moneyed capital”, and that to tax bank shares one per cent on their value while all other intangibles are exempt, constitutes taxation at a greater rate than is assessed upon other moneyed capital, and is therefore in violation of the state law providing the method of assessing bank shares; and in the case of the national banks, which alone can invoke the protection of the federal law, is in violation of Section 5219 of the Revised Statutes.

A brief survey of the federal decisions as to the meaning of the words “*a greater rate than is assessed upon other moneyed capital in the hands of individual citizens*”, will show that the banks have a strong basis for their contention.

#### DECISIONS PRIOR TO THE PRESENT BANK TAX LAW

For a number of years prior to the establishment of the national banking system, the state banks in New York were taxed as corporations on the value of their property in substantially the same manner as other corporations; that is, from the total value of their assets, certain items such as the assessed value of real estate, and exempt securities, were deducted, the balance being taxed to the bank as personal property; the shares being exempt to individual holders.

The National Banking Act when first passed did not permit the states to tax national banks, but this was soon remedied by the Act of 1864, which permitted the states to tax the bank on its real estate, and to tax the shareholders on the value of their shares

as personal property, with the limitation that such personal property valuation should be "*not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state*", and the further proviso that the tax so imposed upon national bank shares should not exceed the tax upon state banks.

The New York legislature then passed an act, in 1865, for the assessment of national bank shares at their full value, and for their taxation as personal property. But no change was made in the method of taxing state banks. This law was attacked, in the first tax case to go to the United States Supreme Court under the National Banking Act—*Van Allen v. The Assessors*, 3 Wall. 573, (1865).

The grounds of the complaint were: (1) that Congress could not permit the taxation of national banks, as this was a surrender of federal power; (2) that the value of United States bonds held by a national bank should be deducted from the assessment of the shares.

The Supreme Court, reversing the New York Court of Appeals, held the act invalid for the reason that the state banks, being taxed on their capital as property and therefore being allowed to deduct exempt securities such as United States bonds, were therefore not taxed as heavily as national banks. But, saying that the legislature could easily remedy this situation, the court went on to discuss the main points raised, and held: (1) that to permit state taxation of national banks was not an improper surrender of federal power; (2) that as a shareholder had merely an interest in the corporation and not in specific items of its property, the value of United States bonds owned by the bank could be included in the valuation of the shares.

The New York Legislature thereupon, in 1866, enacted a new statute which taxed the state banks by the same method as national banks, that is, by a valuation which included United States bonds, and an assessment against the individual shareholder for his shares in place of the former tax on the banking corporation.

This statute was attacked also, the new point of complaint being that individuals were not taxed on their holdings of United States bonds. The Supreme Court upheld the law in *People v. Commissioners*, 4 Wall. 244, (1866). Interpreting the Act of Congress, the Court said that it meant

"No greater proportion or percentage of tax in the valuation of the shares should be levied than upon other moneyed *taxable* capital in the hands of the citizens."

This word "*taxable*" has been seized upon in an effort to justify exemptions, as though the court meant that any amount of moneyed capital in the hands of individuals, or even all such capital, might be exempted without affecting the taxation of national banks.

But that no such broad interpretation was intended by the court is evident from the context. The opinion continues:

"This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the state, who make its laws and provide for its taxes. They cannot be greater than the citizens impose upon themselves. It is known as sound policy, that in every well-regulated and enlightened state or government, certain descriptions of property, and also certain institutions—such as churches, hospitals, academies, cemeteries and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even when the fundamental law had ordained that it should be uniform.

"The objection is a singular one. At the time Congress enacted this rule as a limitation against discrimination, it was well known to that body that these securities" (i. e. United States bonds) "in the hands of the citizens were exempt from taxation."

It is apparent from this language, that when the court spoke of "taxable" moneyed capital, the qualification was intended to embrace such moneyed capital as was customarily liable to taxation, as distinguished from those classes usually exempted for reasons of sound public policy or because employed for semi-public purposes and not for the purpose of making money. And it was not intended to imply that the federal statute could be evaded, and national banks subjected to an unequal burden, by the simple process of *not taxing at all* moneyed capital in the hands of individual citizens. A careful reading of the subsequent decisions, and particularly the case of *Boyer v. Boyer*, confirms this interpretation.

In 1868 the federal act was amended, by striking out the proviso regarding equality with state banks, but continuing the limitation as to other moneyed capital, which has continued without change in Section 5219 of the U. S. Revised Statutes quoted above.

Under this statute the New York law was again contested, on the ground that the assessors had refused to allow shareholders to deduct personal indebtedness from the value of shares, though such deduction was permitted to owners of other personal property. The Court of Appeals upheld the local assessors, and held also that this denial did not violate the federal law, saying that the word "rate" as used in Section 5219 referred only to the actual tax rate, and was distinct from the question of exemptions and assessed valuations. *People v. Dolan*, 36 N. Y. 59, (1867).

This case was not appealed, but an assessment made in 1875, and upheld by the Court of Appeals on the authority of *People v. Dolan*, was taken to the Supreme Court, and the New York court reversed; *People v. Weaver*, 100 U. S. 539, (1880).

In the *Weaver* case the Supreme Court held that the words



"rate assessed" included both the assessment and the resulting taxation, and meant that the tax burden on shares of national banks should not be greater than on other moneyed capital. As a result of this decision, owners of shares in New York banks were then allowed to deduct debts to the same extent as such deduction was granted to owners of other personal property.

Subsequently, there were a number of cases taken to the United States Supreme Court from other states, involving the question of debt deduction; but the laws of these states not being as liberal as the laws of New York, and usually allowing deductions only from certain credits, such bank tax valuations were generally sustained. Because of the difference in statutes, these cases do not bear upon the present situation in New York.

#### DECISIONS RELATING TO EXEMPTIONS

Very few of the bank tax cases taken to the United States Supreme Court have borne directly upon the question of absolute exemption of moneyed capital other than that invested in bank shares. The reason for this is plain. From the time the National Banking Act was passed, down to a comparatively recent period, the constitutions of most states prohibited the exemption of any property save that employed for public or semi-public purposes, and required the taxation of all property not so exempted at a uniform rate. Even in those states where the constitutions did not require it, the general property tax was prescribed by statute, with very few modifications.

Perhaps the only state which did not have the general property tax was Pennsylvania, where separation of state and local revenue, and classification of property at varying rates, had prevailed for many years. It was from Pennsylvania, therefore, that the leading case on the question of exemption of other moneyed capital came up for a decision in 1885—*Boyer v. Boyer*, 113 U. S. 689.

Some years before this, however, in 1874, the case of *Hepburn v. School Directors* (23 Wall. 480) had come from Pennsylvania, and the United States Supreme Court had sustained the state law. The grounds of the appeal in that case were that certain personal property, namely, mortgages judgments, recognizances, and money due upon agreements for the sale of real estate, were exempt from local taxation. It did not appear on the record that the amount of such exempted property was considerable, or that it was of such a character as to compete with the capital invested in national banking, and the Supreme Court had accepted the view that the exemption was merely designed "to prevent a double burden by the taxation both of property and the debts secured upon it."

The facts brought forward in *Boyer v. Boyer* were different. There it appeared that Pennsylvania had adopted a system of taxing intangible personal property at a fixed rate of four mills for

state purposes, with exemption from county and local assessment. Bank shares were similarly taxed for state purposes, but the statute did not exempt them from local taxation, and the county authorities had placed them on the tax roll.

The Pennsylvania Supreme Court, relying on the *Hepburn* case, sustained a demurrer to the complaint, and thus upheld the local tax. But the United States Supreme Court reversed the Pennsylvania court. Referring to the *Hepburn* case, the Supreme Court said:

"That case is authority for the proposition that a *partial* exemption by a state, for local purposes, of moneyed capital in the hands of individual citizens does not, of itself and without reference to the aggregate amount of moneyed capital so exempted, establish the right to a similar exemption in favor of national bank shares held by persons within the same jurisdiction. But it is by no means an authority for the broad proposition that national bank shares may be subjected to local taxation where a very material part, relatively, of other moneyed capital in the hands of individual citizens, within the same jurisdiction or taxing district, is exempted from such taxation. Indeed, such an interpretation of the statute might entirely defeat the purpose that induced Congress to confine state taxation of national bank shares within the limit of equality with other moneyed capital; for it would enable the states to impose upon capital invested in such shares materially greater burdens than that to which other moneyed capital in individual hands is subjected."

Pennsylvania changed its laws so that bank shares were subjected only to the four mill tax imposed on other intangible personal property, and no case quite similar to this has since come before the court, nor have the views expressed therein been modified.

The nearest approach to the allegations of *Boyer v. Boyer*, perhaps, was in *Aberdeen Bank v. Chehalis County*, 166 U. S. 440, (1897), which arose in the State of Washington. The original bill of complaint alleged that there was a large sum invested in loans and securities by individual citizens of Chehalis County, to them payable by other citizens of the state, and exempted from assessment by the local assessors, pursuant to an opinion of the attorney general, and that a larger sum was similarly exempted throughout the state. The complaint, however, did not specify the nature of the securities, nor even recite the attorney general's opinion. The court, therefore, accepted the view of the Supreme Court of Washington, that the only opinion of the attorney general bearing on the matter recommended the omission of accounts, promissory notes, and mortgages from assessment, "in order, perhaps, to avoid double taxation," and that the allegations did not show that "any moneyed capital of the character defined by the

federal Supreme Court was omitted or intended to be omitted by the assessors."

The United States Supreme Court intimated, however, that if the complaint<sup>1</sup> had been more specific as to the kinds of securities exempted, the findings of the Washington state court might have been different—which suggests that had such findings not been different, the United States court might have come to the rescue of the banks.

Subsequent to the decision of *Boyer v. Boyer*, the New York statute was again attacked, and upheld by the Supreme Court in the case of the *Mercantile National Bank v. New York*, 121 U. S. 138, (1887). This is one of the leading cases on the national bank tax. The facts presented as a basis for the complaint, however, were very different from the Pennsylvania situation. The exemptions complained of were:

(1) That shares of stock of corporations other than banks were exempt in the hands of individuals. As to this, the court held, that railroad, mercantile and similar corporations did not compete with banks, and their shares were not moneyed capital; and anyway, the property was taxed to the corporation;

(2) That trust companies were taxed as a unit on their property and the shares exempt. *Held*, that the powers of trust companies as then organized were so limited that they were not competitors; and also that their so-called franchise tax put them about on an equality with the banks.

(3) That savings banks and their deposits were exempt. *Held*, these were not competing institutions, and the exemption of deposits was justified as an encouragement to thrift.

(4) That certain municipal bonds of New York City were exempt to the owners. *Held*, to be a proper exemption based on reasons of public policy, and not adversely affecting the banks.

(5) That residents of New York were not taxed on shares in foreign corporations. *Held*, that this exemption had the same justification as the exemption of shares in domestic corporations.

It is apparent that these complaints against the law did not involve any real exemption of competing moneyed capital, but only attacked the classification system which New York was evolving gradually, in order to tax equitably various kinds of property. Intangible personal property, as the term is generally used, and including "moneyed capital" owned by individuals, such as money and securities, was still liable to assessment as personal property and taxation at local rates.

<sup>1</sup> The complaint alleged that in addition to the investments referred to above, shares and bonds of insurance, gas and wharf companies were not assessed; but the court held, following the *Mercantile Bank* and other cases, that these were not competing moneyed capital.

Although in the *Mercantile Bank* case, *Hepburn v. School Directors* (*supra*) (which sustained the exemption of a few kinds of intangibles representing interests in real property), was quoted approvingly, the court said, significantly:

"The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares."

Obviously there is a wide distinction between the exemption of evidences of an interest in real property, or the taxation of business corporations by some special method, and a tax law which exempts all moneyed capital except bank shares and taxes them at one per cent.<sup>2</sup>

#### DECISIONS UNDER THE PRESENT FIXED RATE BANK STOCK TAX

In 1901 the method of taxing state and national banks in New York was changed from what was substantially the personal property tax, to the present law, which imposes a flat tax, uniform throughout the state, at the rate of one per cent on capital, surplus, and undivided profits. (Trust companies pay what is termed a state franchise tax, also of one per cent, computed in a similar manner.) The value of real estate is included in determining the value of the shares, although the real estate is also taxed locally to the bank—this having been sustained by the U. S. Supreme

<sup>2</sup> CITATIONS FROM *MERCANTILE BANK CASE*: "The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eyes of this statute 'moneyed capital'. Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the Act of Congress."

"The terms of the Act of Congress include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and re-invested. It includes money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and re-investment."

Court in cases arising in other states. The privilege of deducting personal indebtedness from the value of the shares was withdrawn.

This law was attacked because of the denial of debt deduction, but sustained by the court of appeals, which held, *People ex rel. Bridgeport Savings Bank v. Feitner*, 191 N. Y. 88, that as the rate of one per cent on bank shares was much less than the usual personal property tax, this offset the disadvantage of not being allowed to deduct debts. The court added, however, that if there was any bank located in a tax district so fortunate as to have a rate of less than one per cent, its shareholders would be entitled to a reduction to conform to the local rate.

Subsequently, this bank tax statute was taken to the United States Supreme Court, in the case of *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373, (1913), the savings bank pleading, among other matters, that it should be allowed to deduct its indebtedness to depositors from the assessment against its national bank shares. The law was sustained on this point, following the New York court of appeals, in *People ex rel. Bridgeport Savings Bank v. Feitner*, (*supra*). The other points raised as to competing moneyed capital, were substantially the same as in the *Mercantile Bank* case, and were similarly decided against the appellant. In the *Amoskeag* case, although the bank tax had been modified since the *Mercantile Bank* case, the personal property tax in New York still applied to moneyed capital in the hands of individuals, at least in theory of law, although as elsewhere the assessors found great difficulty in reaching that class of property.

Two cases have come before the Supreme Court, which seem to bear upon the question of exemption now being raised by the New York banks, though quite dissimilar. One, *Whitbeck v. Mercantile Bank*, 127 U. S. 193, (1888), an Ohio case, where the admitted facts were that bank shares and other personal property had been assessed in Cuyahoga County at sixty per cent of actual value. The state board of equalization was not authorized to alter the personal property valuation, but was directed by statute to equalize bank share assessments throughout the state, and did in fact establish a basis of sixty-five per cent for the state, to which it raised the banks in Cuyahoga County. This was reduced by the supreme court to sixty per cent, with the observation that the inequality of paying five per cent more than other moneyed capital in Cuyahoga County overweighed any advantage to the bank of being assessed on the same basis as banks in other sections of the state.

It would seem that if the difference in tax burden produced by a bank share assessment at sixty-five per cent, as against an assessment of other moneyed capital at 60 per cent, was sufficient to cause the supreme court to interfere and take off the extra five per cent that the court cannot fail to relieve the New York national banks from a one per cent tax on full value imposed upon them

alone, while other moneyed capital in the hands of individual citizens is wholly exempt by statute.

The other case referred to as bearing on the New York situation, was decided as recently as June 6, 1921, and came up to the United States Supreme Court from Virginia—*Merchants National Bank of Richmond v. City of Richmond*.

That state had adopted a system of classification, and the facts were, that in 1915 bank shares in Richmond were subject to a state tax of thirty-five cents and a city tax of \$1.40—a total of \$1.75; while upon intangible personal property in general, including bonds, notes, and other evidences of indebtedness, the state rate was sixty-five cents and the city rate, established by ordinance, was only thirty cents—a total of ninety-five cents per \$100 of valuation as against \$1.75 on bank shares.

The opinion of the court recites briefly the prior decisions, saying they have established that

“the words ‘moneyed capital in the hands of individual citizens’ . . . include not only moneys invested in private banking, properly so-called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking.”

Distinguishing the case of *Bank of Commerce v. Seattle*<sup>3</sup> (166 U. S. 463), where the precise ground of decision (adverse to the bank) was

“the want of a showing that the moneyed capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with that of national banks,”

the Court held that in the present case there was

“a clear showing of such competition, relatively material in amount,”

and that therefore the tax was invalid.

Here again, it may be inquired, how the Supreme Court, setting aside as invalid a tax which was eighty cents per hundred dollars higher on bank shares than on other moneyed capital, can fail to set aside the New York tax, which in addition to the personal income tax affecting both classes alike, is 100 cents higher than the tax on “other moneyed capital in the hands of individual citizens”—the tax on the latter being *exactly nothing at all*.

Owing to the bank stock tax decisions of the United States Supreme Court which limited the phrase “other moneyed capital”

<sup>3</sup> The bill of complaint in the case of the *Bank of Commerce v. Seattle* was substantially the same as in the *Aberdeen Bank* case referred to above, and the former was decided upon the opinion in the *Aberdeen* case.

to that coming into competition with banks, there was, prior to the recent decision in the *Richmond* case, a prevailing notion in those states where such moneyed capital in the hands of individuals is not very great, that the federal inhibition had only a practical application in the case of state banks, trust companies and banking concerns. In the *Richmond* case the supreme court of appeals of Virginia based its conclusions on the theory that Section 5219, U. S. Revised Statutes "was confined to the prevention of discrimination by the states in favor of state banking associations as against national banking associations." The Supreme Court in reversing the Virginia court of last resort, commenting on that view, stated: "This, however, is too narrow a view of Section 5219." The court observed in its opinion that: "It also was shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes and other evidences of indebtedness comes into competition with the national banks in the loan market."

And here it may be noted that in New York State, containing the greatest financial center in the United States, there is moneyed capital aggregating hundreds of millions of dollars in the hands of individuals invested in bonds, notes, and other evidences of indebtedness, coming into competition with the banks—all of which is specifically exempted from local taxation.

MR. SAXE (continuing): Now, New York perhaps is in a different position from any of the other states, because you see, other moneyed capital, in fact all intangible personal property of any kind, name or nature, has been totally exempted from local taxation. Now, our bank shares pay an income tax upon their dividends. All other moneyed capital, all intangible property, pays an income tax. So far as that goes they are on an equality, but on the other hand our banks pay a one per cent local tax, and all other capital in competition, and all other intangible property is totally exempted from taxation, and now we have to leave the matter to the courts. Thank you.

GEORGE BRYAN, Counsel of the Virginia Bankers' Association: Mr. Chairman, I thank you for this opportunity and shall keep strictly within the rules. I am bold enough to think that I can contribute something at least to the local color of this discussion this evening. I am glad the chair introduced me as counsel for the Virginia Bankers' Association, because I think you ought to know that fact, so you can take what I say with the usual bank discount. Nevertheless, I try in my dealings with the banks and upon this great tax question to be judicial. It is my ambition to be entirely fair, and I will say for the banks that they want to pay what is fair and right, but they do not wish to be grossly discriminated against. That is the history of the case just decided, namely, the Merchants Bank against the City of Richmond. The learned

city attorney of Boston, to whose address I listened with interest and profit, stated the facts as fully, undoubtedly, as he was acquainted with them, but he did not state what Mr. Gary has called your attention to, that the tax on national banks was, the city tax alone, \$1.40, and that on other intangibles thirty cents, the total state and city tax being \$1.75 as against total state and city tax on other intangibles of ninety-five cents. Now, I say that such a discrimination as that, gentlemen, slaps any court or any individual in the face. I say it is so gross and so shocking as to call, aside from Section 5219 of the Revised Statutes, for the relief of a court of justice, if there is anything in fairness, equality and uniformity. But, 5219 comes in, unless it is to be read entirely out of existence, providing as it does that national bank shares may be taxed but not at a higher rate than is imposed on other moneyed capital in the hands of individuals, and the court, let me say, in all candor and sincerity, was bound to rule as it did in the Merchants Bank case. In other words, I believe, and I speak respectfully as a member of the bar of that court, that a great deal of trouble and confusion about this subject can be laid at the door of the court itself. Had it stuck to its decision in the line of cases that the gentleman from New York just read you—23 Wall.; 100 U. S. 105—and the Boyer case especially, in 113 U. S., it would have been all right, and we should not have had any doubt about the law. But the Court got off in the Mercantile Bank case, in 121 U. S., of which mention was made, and with that we went out into the wilderness. Who can tell me tonight what due process of law is? who can tell me what is a combination that is or is not in restraint of trade? who can tell me when a foreign corporation is doing business in another state? It seems to me, my friends, that these are some of the plagues of our English language, that the Constitution contains certain phrases that we ought to know the meaning of, and it takes lawyers, judges, as well as expert laymen to reach a conclusion, after years of effort. It is the same thing exactly with "moneyed capital in the hands of individuals". If the court had stuck to the Boyer case and stopped there, we should never have had any difficulty. Now, in conclusion, let me say this: I do not favor the Nelson bill, and I will tell you why. I think it is shutting our eyes to the history of the subject. I think that the early history of this country has shown an antagonism as against the national bank that never existed against the state bank. I haven't the time to go into details; but I believe it is not right to ask us to turn the national bank and the state bank together over to the community, and therein I differ with my brother Gary from Virginia. He says, "I will trust the legislature." Let me remind him and you that it is not only the legislature but it is the city council and the county board of supervisors in every city and county of the state. The undertaking is too la



now up, and I simply say that we may go back to a great expression of a great Virginian, Patrick Henry, who, you remember, refused the Chief-Justiceship of the Supreme Court of the United States. Patrick Henry said, the only light for the future is the lamp of experience; and if we as publicists today turn our back upon the history of what practically amounts to attempts to confiscate bank stock, the consequences may be serious.

I must conclude now with the local color, to which I alluded at the beginning. The fact is that the banks of Richmond had repeatedly, respectfully, earnestly, for long years, gone to the doors of the city council of Richmond and asked for relief, and the council came back and said, "No, we need the money, and the banks are rich—fight." Then the banks went into court and said, if there is anything in the English language, if there is anything in 5219, we are going to find it out, and they did find it out, as the court interpreted the law on the sixth of June last.

Let me say to Mr. Wallace and Mr. Hill that I deeply sympathize with them in the incidence of the subject to which they allude. I have no right to speak officially as general counsel of the Virginia Bankers' Association, but I know the feeling of my clients—that it is in their heart to bear to the maximum every cent of burden that others of like kind bear with them.

OSCAR LESER of Maryland: I am sorry that I had no previous opportunity of studying this question, but I happen to have in my hand a copy of the opinion of the supreme court in this case, and while the argument has been going on I have jotted down a few notes. It is quite appropriate that a representative from Maryland should say something on this subject, because it was in the case of *McCulloch* versus *Maryland* that the supreme court held that my state could not tax the United States Bank, and it was later, in a Maryland case, decided by the United States Circuit Court of Appeals that the shares of a Maryland national bank could be taxed at a higher rate than that applied to bonds and foreign stocks held by private investors.

I am not a bit worried about the decision in the Richmond bank case, so far as my state is concerned. I do not think there ought to be any serious ground for uneasiness anywhere, because when you read the opinion you will notice that the findings of fact upon which the supreme court bases its ruling are its own inferences from the rather inadequate testimony in this particular case. In other words, as the Virginia supreme court had assumed that the only relevant fact in the case was whether or not there was a discrimination against *national* banks in favor of *state* banks, it paid no attention whatever to the other evidence as to how far a tax on "other moneyed capital" might be a discrimination against national bank shares. In this situation, Mr. Justice Pitney, speak-

ing for the supreme court, said that they would do the best they could and draw their own inferences as to what the Virginia court might have found and could reasonably have found from the evidence; and that they would therefore assume that "other moneyed capital"—notes, bonds and so on—taxed at a lower rate, was really in competition with the banking business.

Now, in Maryland if there is any discrimination at all, it is a discrimination in favor of national banks as against certain other moneyed institutions. Since 1914, state and national banks have been taxed on their shares at the rate of one per cent for local purposes, plus the regular state rate applied to other property; while, on the other hand, up to a year ago, all trust companies and surety companies, representing a large amount of capital, were taxed at the regular local property rate. As most of these shares were held in the City of Baltimore, that local rate has been around two per cent, and for the last two years nearly three per cent. The rate on trust company shares was reduced in 1920 to one per cent, equalling that of banks, while the tax on surety company shares still remains at the full local rate, now almost three per cent in Baltimore and more than one per cent elsewhere. The surety companies insisted on a special method of valuation in preference to a fixed rate, but their bill was vetoed by the governor, so that even today there is still a discrimination in favor of the banks as against surety, fidelity and casualty companies and also as against "moneyed" corporations other than banks and trust companies.

So far as private banking capital is concerned, that was also a question that was directly involved in the Maryland case which went to the federal court, but the amount taxed at the lower rate was deemed relatively insufficient to be taken into consideration. It was in 1902 that the Maryland act of 1896, which taxes productive bonds, notes and foreign stocks in the hands of individuals, at a local rate of thirty cents on the hundred, and at a state rate which now is fifteen cents on the hundred, was under examination in the case of *National Bank of Baltimore* versus *Baltimore*. The question was whether the shareholders of the bank were entitled to the thirty and fifteen cent rates on their shares of stock. It was decided against them by the circuit court, and later by the circuit court of appeals. Not only was no further appeal taken in that case, but no Maryland bank has, in the intervening nineteen years, made complaint of discrimination against it because of the thirty-cent rate on other privately held investments. Now, I say this—that while such conduct of the Maryland banks may not establish the law for all banks, still it raises a strong presumption that there is no harmful discrimination against banks in that kind of a tax; and I therefore think that if the facts had been fully developed in this litigation, the supreme court itself might have come to an entirely different conclusion. When you read this opinion, you get

the idea that there was no question about the direct and hurtful competition of private investments with the capital of national banks, and the thorough investigation in the Maryland case is not even referred to. I do not think the radical possibilities of this decision ever entered the minds of the court.

Now, we in Maryland have further comfort, because so far as past years are concerned, if the banks should go so far as to try to have any taxes refunded, they will have some trouble, I think, in accomplishing such a purpose, because our courts apply the principle that a tax paid even under a void law cannot be recovered unless paid under duress, and none of our banks can meet this condition. They have cheerfully paid the tax.

Finally, and here is a point of great practical importance, bank deposits have been held to be exempt from taxation in Maryland. If, therefore, the banks should successfully make the point hereafter that they are entitled to the thirty-cent local rate instead of the dollar local rate (with certain deductions), it will be perfectly easy to compensate for the loss by imposing a tax on deposits, especially by following the Vermont law, which has resulted in most of the banks, national as well as state, paying the tax on behalf of their depositors.

WILLIAM BAILEY of Utah: I want to ask Mr. Hill whether if mortgages were constitutionally exempted, that in his opinion would prevent the assessment of national banks.

MR. HILL: If I am correct in my interpretation of the law, it would not, because I do not believe that the mere loaning of money on mortgages is competition with the banking business. As I understand the prohibition, it is against taxing other moneyed capital which competes with bank capital, and I do not believe simply loaning money on mortgages would be held a competition with banking capital.

MR. SAXE: Will Mr. Hill give us an illustration of what he thinks is moneyed capital competing with the banks?

MR. HILL: I think it is confined to institutions doing a banking business, similar to business done by national banks, but I admit that this last decision leaves me in some doubt. That I believe had been the effect of all the previous decisions, and this decision does not purport to overrule the previous decisions. Some of its language does seem to me inconsistent with the previous decisions. That is all I can say.

THOMAS E. LYONS of Wisconsin: I have shown some anxiety to present what little I have to say on this question, as I am due at the resolutions committee.

Whatever may be the outcome of further litigation on this ques-

tion, it seems clear from the conflicting statements of the United States Supreme Court decisions referred to this evening and the divergence of views expressed, that complete relief cannot be looked for in that direction. The only relief that could be secured in that way would be by adjudicating each individual case. Clearly that is neither a safe nor satisfactory rule for tax administration. A more definite, comprehensive and uniform rule is required. Now then, what is the practical remedy, and what should this conference do? It seems to me there is only one answer to that question, and that is to go on record in favor of an amendment of section 5219 of the federal statutes.

When that section was enacted it was for two purposes; first, to enable the states to tax national banks at all, and second, to prevent discrimination between national banks and other institutions engaged in the same kind of business. The act of congress passed for the purpose, clearly authorized the several states to tax national banks, but only in the manner therein specified—that is, by taxing the stockholders in the district where the bank was located, provided that such taxation should not be at a greater rate than was assessed upon other moneyed capital. The latter condition was further qualified by adding the words “in the hands of individual citizens of such state”. In the face of this plain language, and the drift of the opinion in the recent Richmond National Bank case. I agree with the gentleman from New York that there is little prospect of securing relief from further litigation.

MR. LESER: “Competing capital.”

MR. LYONS: The word “competing” is not in the statute, as I recall it. That being the case, it seems to me an amendment of the statute is the only practical thing. Now, what kind of an amendment shall we seek and what can we get? We, by the way, in Wisconsin are in the exact situation of the State of New York. Moneys and credits and stocks and bonds are exempted outright, except the stocks of banks and trust companies, and they are taxed in the regular way. Now, the purpose of Congress, when it authorized the states to tax national banks, was to give the states the power to tax national banks by any system of taxation then in vogue. It so happened that the only system in general vogue at the time was the property tax, and it did permit that system by taxing the stockholders on their holdings and at the place where the bank was located. The full value of the bank property and the entire business of the bank was reached in that way.

MR. SAXE: Would you yield for a question: Are you familiar with the line of decisions of the United States Supreme Court, such as in the Central Pacific case, where the United States Supreme Court held, much later than in the earlier cases, under the

national banking act, that a state could not tax a federal franchise; the national banks are operating under a federal franchise.

MR. LYONS: I did not have that question in mind. But practical effect of the taxation of national banks by all the states is that we tax them at their full value. Now, what more can you do with any institution, under an ad-valorem system? I believe that was the purpose of Congress, to permit that thing—in other words, to permit banks to be taxed according to the system of taxation then in vogue. Now, we have additional systems of taxation, and why in justice and logic should not the states be authorized to tax national banks by any system of taxation in general use and applicable to other property, income or business in the state? Long before this decision was rendered, it occurred to us in Wisconsin that section 5219 ought to be amended. Why? In the Owensboro case, 173 U. S. 664, and in several other cases it was held that a state can tax national banks only in the manner prescribed by section 5219. This means that you cannot tax the income of a national bank, and you cannot tax its business; you are limited to the taxation of the stock in the manner therein described.

MR. HOLCOMB: Real estate.

MR. LYONS: Real estate, of course. We have an income tax in Wisconsin, applicable to every form of income, and as first enacted it was applicable to state banks, but state banks are in daily competition with national banks. It is certainly unfair to tax a state bank on its income when you cannot tax a national bank competing with it every hour of the day in exactly the same line of business. The result is we had to exempt state banks also, so our income tax does not apply to banks at all. Why shouldn't it? Of all lines of business in the State of Wisconsin, and I think throughout the United States, there is none that has a steadier, safer, or more certain income than banks. There are industries of course which produce greater income during given periods, but taken as a whole, the banking business is, I believe, the safest, the steadiest, and, generally speaking, the most profitable of any business in this country—I mean as a steady-going and constant thing. Why should they be exempt from any part of the burden that falls upon other property or other business? Now, I have no doubt that the majority of bankers are like the rest of us—reasonably fair and public-spirited—but I am not impressed with the magnanimity which offers to submit to a tax of one per cent when national banks are practically all located in cities, and there is hardly a city in the United States that has as low a rate as one per cent. I don't believe there is one. Most of them have rates of two and one-half or three per cent.

There is just one thing I should like to add. Having this in

mind, I ventured to make a hasty amendment of section 5219, so as to authorize the taxation of national banks by any system of taxation in general use in the state, providing of course—and that should be rigidly preserved—that no discrimination should be practised against them, compared with other concerns engaged in the same line of business. I aimed to preserve as nearly as practicable, for policy purposes, the language of the present section 5219, but it required some transposition and some changing of language.

No doubt a more concise and satisfactory statute could be framed by abandoning the present law altogether. If that course is deemed advisable, of course it may and should be followed. In the meantime I propose the following draft:

Section 5219. The several states are each authorized and empowered to tax the property, business and income of national banks in the same manner and to the same extent as other property, business and income in the state in which such banks are located are taxed. The legislature of each state may determine and direct the manner and place of taxing national banks located within the state, subject only to the two restrictions that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed upon the moneyed capital of banks and trust companies in such state, and that the shares of any national bank owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere.

SAMUEL LORD of Minnesota: Mr. Chairman and ladies and gentlemen: The hour is late, and I promise to take up very little of your time. Mr. Lyons has said much better than I could nearly everything I had in mind to say, and it would be an unwarranted trespass upon your time for me to repeat the things that he has said.

Letters recently received from widely separated parts of the United States seem to indicate that copies of a letter I wrote some time ago to our congressmen from Minnesota, in regard to the Richmond decision, have been very extensively circulated. This letter, which was rather hastily prepared, nevertheless quite fully sets forth my reasons for suggesting an amendment to the federal statute, and for that reason I have decided to have it incorporated in the record of the proceedings of this conference. As I view the matter, it is useless to discuss the legal phases of the case. That is history. I do not believe that any litigation now pending or any action that may be hereafter started will secure a reversal of that decision, and I feel sure that the only way the situation can be cured, if it can be cured at all, is by an amendment of the federal statute.

Now I am in entire accord with the suggested amendment read by Mr. Lyons, or any other amendment that will clarify the situa-

tion and make the statute mean what it has always been understood to mean by the bankers and taxing officials of Minnesota. I was glad to hear Mr. Paton say that the bankers of Minnesota and Maryland were satisfied with the amendment proposed in my letter, because these states have had an extended and successful experience in the taxation of money and credits at a low flat rate, and the bankers of both these states know that a low flat-rate tax on such property is in every way desirable.

Now in Minnesota we tax banks much as they do in other states. The value of shares of stock, surplus, undivided profits and other funds are added together, and from this we subtract the amount of the legally authorized investments in real estate, and the balance is taxed against the shareholders at forty per cent of its full and true value in money. Bank stock is assessed upon exactly the same basis as real estate in the villages and cities where the banks are located. In 1911, inspired by a very able article, written by Doctor Bullock, we called the attention of our legislature to the desirability of a low flat-rate tax on money and credits, and finally, after several conferences with the tax committees of both houses, a bill embodying Dr. Bullock's views on the subject was prepared and introduced by one of the banker members of the state Senate and pushed through the legislature. My recollection is that every banker member of the legislature—and there were several of them—voted for the measure. This law, in lieu of all other taxes, imposed a flat rate of three mills on all money and credits owned in the state, except credits secured by real estate mortgages recorded in the state, and money and credits belonging to incorporated banks.

This law as well as our mortgage registry tax law has been a good revenue-producer and is well regarded by all classes of taxpayers in our state. But unless the federal statute is amended I feel sure that both of these laws will be repealed by the next legislature, because I am sure that the people of Minnesota will not willingly permit bank stock to be taxed at the low rate of three mills on the dollar.

Mr. Paton, the attorney for the American Bankers' Association, when he addressed you a short time ago, facetiously remarked that the decision of the supreme court in the Richmond case had placed the tax commissions throughout the United States "in a hell of a fix". Mr. Paton is mistaken. The tax commissions are not in trouble, but I greatly fear that unless the federal statute is amended many taxpayers throughout the United States who have honestly listed their money and credits for taxation will find themselves "in a hell of a fix". Except in so far as tax commissions desire to see our tax laws improved and made more just, it makes no difference to them whether the law is amended or not, but it does make a whole lot of difference to honest taxpayers throughout

the country whether we have this amendment to the statute or not, and I shall endeavor to show you why.

In 1911, when the three-mill money and credits tax was enacted in Minnesota, the total revenue derived from the taxation of such property amounted to only a few thousand dollars. People refused to list such property. They resorted to all kinds of devices and schemes to conceal it from the assessors, because if assessed at full value and taxed at the current rates in force in the villages and cities of the state it would have resulted in confiscation. The result was that we got very little revenue from this source. And taxes on all other kinds of property were increased by reason of the fact that money and credits were escaping. Now, after ten years' experience under this law, instead of deriving only a few thousand dollars, we collected last year, if I remember correctly, something over thirteen hundred thousand dollars. It is manifest, therefore, that our low flat-rate tax on money and credits has been of decided benefit to all honest taxpayers, including, of course, all owners of Minnesota bank stock, and I submit that it would be a backward step to leave the federal statute in its present form and thus compel the repeal of this very desirable and productive tax law.

The Richmond bank decision was called to my attention by our alert and able secretary from whose watchful eye no tax decision ever escapes, or I presume that I should not have known of it until now. Well, to tell the whole truth, I was a good deal wrought up by the decision and I sat down at once and wrote our members of Congress the letter I told you about, which, if you will bear with me a little longer, I will now read to you.

" ST. PAUL, MINNESOTA, JUNE 28, 1921.

" HON. KNUTE NELSON,  
Senate Chamber,  
Washington, D. C.

*My dear Senator:*

"I am enclosing you herewith a copy of the decision of the United States Supreme Court in the case of the Merchants National Bank of Richmond vs. The City of Richmond, handed down on the 6th inst.

"The decision is probably sound, but if taken advantage of by national banks will play havoc with the taxing system in many states.

"Under the provisions of Section 1975, General Statutes 1913, money and credits in this state, in lieu of all other taxes, are subjected to an annual tax of three mills on each dollar of the fair cash value thereof, with this exception, that money and credits belonging to incorporated banks situated in this state and obligations secured by real estate mortgages on which the registry tax has been paid, are not subject to this tax; and with the further



exception that bonds and certificates of indebtedness issued by the state or any political subdivisions thereof are exempt from taxation. (Section 1911, General Statutes 1913.)

"As a prerequisite to recording a real estate mortgage in this state, the person offering the mortgage for record is required to pay a registry tax of 15 cents upon each hundred dollars or fraction thereof of the obligation secured, if the mortgage runs for five years or less; and 25 cents per hundred if by its terms it runs for a longer period. (Section 2302, General Statutes 1913 as amended.)

"It seems perfectly clear in the light of this decision that we cannot, while the above mentioned laws remain on our statute books, legally tax the capital stock of national banks more than three mills on the dollar of the fair cash value of the stock, if, in fact, we can tax them at all.

"The tax rates in the villages and cities of Minnesota range all the way from 50 to 120 mills on an assessment made on a basis of from 25 per cent to 40 per cent of the full and true value of the property assessed; or on approximately from 18 to 60 mills on a full valuation. With taxpayers in cities and villages paying taxes on the above basis on tangible property you can imagine the upheaval that is sure to take place if the national banks of the state stand upon their legal rights and insist that their capital stock be taxed upon the basis laid down by the federal statute in question as interpreted by the Supreme Court.

"There was undoubtedly abundant reason for incorporating in the federal statute at the time of its enactment, the provision that the capital stock of national banks 'shall not be taxed at a greater rate than is assessed upon the moneyed capital in the hands of individual citizens of such state'. Such banks were then in a process of incubation. They were regarded in many localities with extreme distrust; they were entering a field which had theretofore been monopolized by state and private banks, and the law authorizing their incorporation was regarded by many eminent lawyers as violative of the plain terms of the federal constitution and an encroachment upon state and private rights. Under these circumstances Congress evidently felt that the statute in question was necessary to protect them from the danger of unjust and discriminatory state laws. I submit, however, that the contemplated danger and all other real and imaginary reasons for the enactment of the statute have long since passed away. National banks are now so firmly intrenched that they are no longer menaced by such laws as our 'money and credit' and 'mortgage registry' tax laws, but on the contrary, they, together with all other honest taxpayers, are greatly benefited by these laws.

"In 1911, the year our three-mill 'money and credit' tax law was enacted, the total amount of revenue derived from the taxation of all kinds of credits and money in this state was \$379,754. In 1921 the revenue derived from this source amounted to \$1,329,365. In these circumstances to say that national banks have been unjustly affected by our 'money and credit' tax law is not the truth. On the contrary, as before indicated, they have clearly benefited thereby.

"The attempt, wherever tried, to tax money and credits on the same basis as tangible property or the capital stock of banks has always proved a dismal failure, and if experience has any value in divining the future, all attempts to so tax it are bound to meet the same fate. About the only people who have ever been successfully taxed on their money and credits when such property was legally taxable on the same basis as bank stock, were widows, orphans, and clergymen. Moreover, the money and credits taxed under our laws at three mills on the dollar do not in any true sense compete with banking capital. The earnings of such institutions come very largely out of deposits rather than capital, and I submit that only capital that is really competing with the capital of national banks is the capital of state and private banks, mortgage loan companies, and trust companies doing a banking business; and in these circumstances it seems clear to me that the federal statute in question should be amended so as to read substantially as follows:

"Sec. 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital *used in banking*, and that the shares of any national banking association owned by nonresidents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes to the same extent, according to its value, as other real property is taxed."

"In its present form this law as interpreted by the supreme court will disrupt the taxing system of nearly every northern state. It may compel us to repeal our very satisfactory 'money and credit' and 'mortgage registry' tax laws, and our law exempting state and municipal bonds from taxation; and unless amended is almost sure to result in injury to nearly every honest taxpayer in the state, including, ultimately, the national banks themselves.

"I trust that the matter may have your careful consideration and be given such attention as its great importance demands."

This letter, Mr. Chairman and gentlemen, in a crude way expresses my views in regard to this very important matter; and it is my earnest hope that Congress may be persuaded to so amend the federal statute that it will not be necessary to repeal the very desirable "money and credit" and "mortgage registry" tax laws which have worked so admirably in our state and which have proved to be long steps forward in our painfully slow struggle for tax reform.

In conclusion, I might say that bills amending the s<sup>t</sup>

question, and drawn along the lines suggested in my letter, have been introduced in the Senate by Senator Nelson and in the House by Mr. Volstead.

MR. PATON: As Mr. Lord has put in the record his letter, I should like to put in the record an extract from a letter from Utah in partial confirmation and in partial criticism of his letter, which brings out the point that I tried to make, that if any amendment of the national statute was made, there should be a limit put, beyond which it could not go. If you will allow me to read this, it won't take two minutes:

"It seems to me Mr. Lord's letter contains both an obvious truth and an obvious untruth. First, it is true that money and credits cannot be taxed on the same basis as tangible property or the capital stock of banks. Second, it is not true that national banks no longer need the protection of the federal law against unjust and discriminatory state taxation.

"We have planned here a classified property tax, believing it to be in our best interests that such a law be enacted, and in doing this we recognized that we could not hope for a rate of tax upon bank shares as low as upon moneys and credits generally and we recognized that under the decision of the supreme court in the Merchants National Bank case, we can do nothing towards a classified property tax unless the federal statutes be amended.

"The fact that Minnesota taxes bank shares at the highest possible rate and in excess of everything except ore deposits, and that Montana now taxes bank stocks at a higher rate than any other property, and the further fact that in practice in this state, even under a general property tax, supposedly uniform upon all classes of property, bank shares have been and are now taxed at a rate greatly in excess of any other property in the state, unless perhaps certain public utilities, is sufficient evidence that protection must be afforded by federal law, against discriminatory taxation by the states.

"Personally, I should prefer to see the Nelson bill enacted rather than to let matters rest as they are, but it is certainly important that the bill go further and fix a maximum rate of taxation for bank shares. Banking in one state is so inter-related with banking in other states that in the interests of the country at large taxes upon bank stock should be made as nearly uniform as possible, and in view of the established rate in New York of 1% of capital, surplus and undivided profits, it seems to me reasonable to urge the insertion in the federal law of a provision permitting taxation of the stocks of national banks at not to exceed 1% of the capital, surplus and undivided profits thereof. If necessary, the rate might be increased to 1½%, or even 2%, but some limitation should be fixed, because if we recognize that the rate of taxation on bank shares cannot be limited by the rate upon moneys and credits generally, then the banks are thrown in a class by themselves and are left without defense, at the mercy of the State Legislatures, and the result is easy to anticipate."

In a number of states banks are treated fairly; in other states the evidence is they are not. If banks, state and national, are put in a boat by themselves, and the state also is allowed to tax them as they please, there is danger they may be taxed more highly than they should, and if the federal law is to be amended, there should be some limit. I simply want to make that point in the record.

C. P. LINK of Colorado: To think that the courts would permit discrimination against national banks, whether or not there was a federal law, is absurd. It is clearly demonstrated that the courts will not permit discrimination. I think national banks would be safe with this statute wiped off the books, and to my mind a fixed limit of one, two or three per cent on the value of banks, when other classes of property in those same taxing districts are bearing from four to five times that much, is absolute inequality.

B. F. BURTLESS of Michigan: I had not thought of entering this discussion. I want to say that in Michigan I do not think the banks need have any fear of an amendment to the federal law along the line of Mr. Lord's letter. The claim is made frequently that bank stock is classed higher than any other class of property, but I do not believe it, in our state. Bank stock in Michigan is usually taxed a little under its book value. I do not think there are many banks in the state which are not worth more than the book value. I think that every member of this association who favors this amendment would do well to communicate promptly with his delegation in Congress, urging the adoption of the amendment, and giving his reasons therefor.

MR. LESER: I should like to say one word: I think it will be of interest, as showing how Congress itself feels on the question of discrimination. In the District of Columbia up to about one year ago national banks were taxed—and, by the way, they are taxed there on their gross receipts, the only place it can be done—and there was no tax whatever on privately invested capital, and only then did they enact a law putting a low rate, certainly not over forty cents on one hundred dollars, on this privately invested capital, under the very nose of Congress, therefore they never thought there was any damage done to banks by that sort of discrimination.

MR. SAXE: I should like to point out, if I may have the time, that the proposed amendment in the Nelson bill would not cure the situation in an income tax state, because where you have moneyed capital in the hands of individual citizens of the state, which actually competes with national banks, as can be very easily demonstrated in New York, why you can see that you still have the discrimination.

MR. LORD: I might say to Mr. Saxe, when I made that suggested amendment, which was incorporated into that letter to Senator Nelson, I did not feel that that was the last word on the subject. Now, the proposed amendment of Mr. Lyons is entirely satisfactory to me. I want the amendment made to fit the situation of all the states, so that they may all be benefited by it. I simply, as I said, on the impulse, sat down and wrote that letter, as I felt it was up to our members of Congress to do something to save the situation.

MR. PATON: Did you overlook the fact that the state statute in a number of states would have to be amended?

CHAIRMAN HOWE: That is what we are trying to do in Kansas; we are trying to amend our constitution so as to help the national banks and other property holders.

MR. PATON: The federal amendment alone would not accomplish it in New York. The state law would also have to be amended.

[Adjournment of Session.]

## TENTH SESSION

FRIDAY MORNING, SEPTEMBER 16, 1921

CHAIRMAN BLISS: The meeting will please come to order. We have a long and important session today, and I will ask everybody to be prompt, if possible. We have brought over from last night's meeting the subject of federal subsidies for local governmental needs, by Douglas Sutherland, of the Civic Federation of Chicago.

### FEDERAL AID

DOUGLAS SUTHERLAND

Secretary, Civic Federation of Chicago

Are we of the United States of America ready to change the basis of our government from that of a union of sovereign states, each with its own fiscal system and administration and rather independent political subdivisions, to that of a much more dominant national government, with the states and their subdivisions as departments, subject to a highly centralized national control over state and local finances and, to a large degree, over state and local administration? or,

Are we prepared to plunge our national and local governments into a tangle of intertwined financial arrangements, in which Uncle Sam will be called upon to dole out to state and local governments more and more funds, to be disbursed by them, not only wholly without check against extravagance and inefficiency, and practically without responsibility, but actually in such a manner as to encourage and stimulate local waste and unnecessary expenditure?

These questions are raised sharply by the growing agitation for immediate extension into various fields of governmental activity (established and proposed) of a phenomenon of public finance popularly known as "Federal Aid". It seems highly desirable that Congress should determine the answer to the first question before it permits itself to be hurried further along the present course of "Federal Aid" in the United States. Otherwise we certainly shall stand committed to an affirmative answer to the latter question—and that would prove unfortunate, if not, indeed, disastrous.

Consideration of this subject is especially timely because two measures, the so-called Maternity and Infancy Bill and the National Department of Education Bill (and possibly others), in which the granting of millions in new "aids" from the federal treasury to the state governments, is the main feature, are now pending before Congress. These two, alone, would practically

double the total of all the existing grants, which by now aggregate over \$113,000,000 annually, and they are being rapidly pushed for enactment by their respective groups of enthusiastic proponents.

Just what, then, is this federal "Aid" which inspires the drafting of bills and summons lobbies to battle? By this term is understood the appropriation by Congress from the federal treasury of funds to be disbursed to the states, or to local institutions within the states, generally through the agency of the state government, and to be used for the local conduct of some designated public activity. The chief, and generally, practically the only condition underlying these grants of "aid", is that the state, either alone or with its local governments, shall expend for the specific function involved, at least as much money as it is to receive from the national government.

Federal "Aid" in the United States then, is rather comparable in character to the "grants in aid" of the British government; and the subventions of the French, Belgian and German governments, under which certain financial allowances are made by the national governments to the local authorities, for the conduct of various specified activities. However, in the theories upon which these grants rest or are supposed to rest, their origins, and the conditions which accompany them, a wide difference is evident between the situation in America and that abroad. In point of fiscal results a similarity again will be noticed, especially between British experience and American tendencies.

The earlier grants of "aid" from the United States government seem to have been designed chiefly to stimulate, in a comparatively young country, certain public functions, which appeared essential to the welfare and development of the nation as a whole. This was particularly true of the first grants, which, by the way, were not in terms of money, but in lands, such as the famous land grants for endowment of the common school funds and, to a much more limited extent, of higher education funds, and the like. In at least one group of these land grants—namely in encouragement of railroad construction—the grant was to private, and not to public institutions. The first of the money appropriations of this character (at least of those continued to the present day, and it is difficult to imagine that the abandonment of any "aid" once established ever could be procured) seems to have been made in 1887, under the Hatch Act for agricultural experiment stations in the several states. This since has been supplemented by the Adams Act of 1906, under which appropriations, equalling in the aggregate those under the Hatch Act, also are made toward agricultural experiment stations locally operated. The Hatch Act was followed promptly in 1888 by the distributive act, in favor of disabled soldiers and sailors, and by the Secor-Mavill Act of 1890, in aid of agricultural colleges.

As an instance of the possibilities for growth in the field of federal subsidies to local governments, may be cited figures courteously supplied under date of August 16, last, by the Honorable E. W. Ball, Acting Secretary of Agriculture, showing the total federal funds available for cooperative agricultural extension work within the states to have grown, only since the taking effect of the Smith-Lever Act, in 1914, from \$2,111,350 to \$10,569,401, for the fiscal year 1920-21. This probably includes local funds locally raised to "match" the federal funds.

The following list of the current federal appropriations to local authorities in "aid" of the various objects indicated, gives an even better idea of the very considerable field already covered by our federal subsidies, and of what may be expected if ill-considered, or un-considered, extensions of this phase of our public finance are permitted:

<i>Object of Subsidy</i>	<i>Amount of Total Appropriation by Congress, 1920-21</i>
Support of disabled soldiers and sailors (Act of 1888).....	\$1,000,000.00
Vocational education (Smith-Hughes Act of 1917) .....	3,362,177.37
Roads (Acts of 1916 and 1919) .....	97,000,000.00
National Guard .....	*1,675,918.61
<i>Venerual Diseases</i>	
Aid to states in protection of military and naval forces....	400,000.00
Payments to states for prevention of .....	1,000,000.00
Payments to Universities for research .....	100,000.00
Payments to Universities for research in educational measures against .....	300,000.00
Industrial rehabilitation .....	777,951.47
Agricultural experiment stations (Acts of 1887 and 1906) ..	1,440,000.00
Agricultural and mechanical art college (Acts of 1890 and 1907) .....	2,500,000.00
Agricultural extension work (Smith-Lever Act of 1914) ..	†3,583,000.00
Arizona and New Mexico from national forest funds ....	63,898.43
Arizona and New Mexico school funds .....	24,950.28
	\$113,594,896.16
To a few states ‡ under the oil-leasing act .....	1,569,007.97
	\$115,163,904.13

\* Disbursement figure for year ended June 30, 1920. The appropriation figure for that year reported by treasury department as \$13,194,791.

† Figure given in table prepared by courtesy of Illinois legislative reference bureau. A letter from the division of accounts and disbursements of the department of agriculture gives the total disbursements to the states for the last fiscal year as \$5,080,000.

‡ According to the Honorable F. M. Goodwin, assistant secretary of the interior, only California, Wyoming and Montana are entitled to substantial amounts under this act, Louisiana, New Mexico, Idaho and North Dakota being entitled each to less than \$200.



I believe the foregoing list to be approximately correct, and by taking the lesser amount where two figures for the same item have been received from different sources, I have endeavored to err, if at all, on the side of understatement.

It is possible, however, that the list may not be entirely complete as to items, nor precisely accurate as to amounts. There is the greatest confusion in Washington in the keeping of these records of aid granted to the local governments. The department of the treasury has nowhere a consolidated statement of the payments made to the several states for any given year under the various acts establishing and providing for "Federal Aids". The appropriations, probably of necessity, run to the various departments and bureaus having "supervision", and one must apply to each of these for detailed information. This is not always easy to obtain, not through any fault of the officials or public employes, who have been exceedingly courteous and obliging, in response to requests for information, but because of the complications of the system itself, and the manner in which many of the "aids" have been provided for. Such difficulties of accounting cannot be charged to present officials in the treasury department, and, as will appear shortly, they are not characteristic of national "grants in aid" in the United States alone, but also draw fire even from friendly critics of the British system.

To this collection of national "aid" appropriations, totaling more than \$113,000,000 (without counting the oil-lease act payments, which are in the nature of reparations for federalized land of taxable values), it is now proposed to add still further, both in objects of subsidy and in the amounts to be granted. The two pending measures, as already stated, would alone almost double the present amount of "grants" carrying appropriations for subsidies to the states aggregating \$101,450,000, and for administration expenses totaling \$530,000. And for both, that would be only a modest beginning.

The so-called Smith-Towner bill, to establish a department of education, would carry distributive funds of \$7,500,000 for education of illiterates over 14 years of age; \$7,500,000 for Americanization work; \$50,000,000 for general education; \$20,000,000 for physical education, and \$15,000,000 for training of teachers, \$500,000 being proposed for departmental expenses. The so-called Sheppard-Towner Maternity and Infancy bill would carry as a beginning distributive funds of \$1,480,000 (\$4,800,000 originally was proposed), of which \$30,000 might be diverted to administration of the law by the children's bureau. There may be other bills of similar general fiscal character, which have not had the organized support and publicity which has been thrown behind these two measures. It has been recently proposed that federal aid be extended to local governments for home-building projects, as a solu-

tion of the housing problem, and other "grants" have been publicly suggested. Perhaps these, too, are pending as "bills".

Of recent years, the main idea in the United States behind the different proposals for "Federal Aid" is best embodied in the phrase, "get the money". The character of the subjects and objects of such subsidizing legislation has been a matter of secondary consideration. Growth of population necessarily has added to the functions of government and there has also been a marked tendency to try both to solve social and economic problems and more and more to safeguard the individual from the vicarious ills of life, by putting the government into the position of a sort of mundane Providence. All this (together with the war-time increases in cost of government) has swelled tremendously the financial burdens of the municipalities and to only a lesser extent of county and state governments. Enthusiasts, with their own governmental interests, or perhaps with special hobbies to promote, pressing their demands for public recognition and financing of pet projects, regardless of these conditions, naturally have been met with reminders that existing local tax burdens had increased heavily and that at best they could get only a part of what they asked. At once they began casting about for that pot of gold at the end of the rainbow labeled "new sources of revenue", about which all public servants, unfamiliar with tax matters, soon learn and which they apparently believe to have been located at Washington. Many local public officials and some public educators, who, incidentally, are exempted largely from the burdens of the federal income tax, have been amazed and entranced at the ease with which Uncle Sam has been able to extract millions and hundreds of millions from commonwealths and communities which appear to groan under the burden of local government. By means of industrious propaganda they have been somewhat successful in sharing their amazement with their fellow citizens, including many associations of women who have not yet got it through their heads why their male friends and relatives should be so irascible and distraught along about the Ides of March. "If a stingy city, county or state cannot supply the money," say these tax-exempt persons, "why not get it from the national government?" And a great many of the good women of the country—not all by any means, but only those who have begun to vote and to pass resolutions, a little before they have begun to think out public questions clearly and for themselves—echo, "Why not, indeed?"

That the "get the money" idea is the compelling inspiration behind the more recent suggestions for "federal aid" is sufficiently indicated by some of the measures themselves.

For existing local activities, federal money is eagerly sought, but any suggestion of federal supervision or direction, such as might be calculated to promote efficiency and economy, is stren-

uously opposed. The present vocational education acts are so lenient and meager in the limitations and conditions imposed as really to require a state to do little more than to spend, itself and through its subdivisions, a given amount for "vocational education."

The pending Smith-Towner measure specifically provides "that all the educational facilities encouraged by the provisions of this act and accepted by a state shall be organized, supervised and administered exclusively by the legally constituted state and local educational authorities of said state, and the secretary of education shall exercise no authority in relation thereto, and this act shall not be construed to imply federal control of education within the states, nor to impair the freedom of the states in the conduct and management of their respective school system." In other words, Uncle Sam will simply give away \$100,000,000, upon the basis of apportionment established in the act itself. Does it require a new \$500,000 department of government and a new face at the cabinet table, merely to do that?

It develops in the discussion, however, that one of the big possibilities latent in this bill is a three-way method of financing for our public schools. Public school educators of high position, whose opinions in most things are to be seriously considered, have publicly enunciated the doctrine that the public school should be financed, one-third by the nation, one-third by the state and one-third by the local community. Practically throughout the Union there is already substantial "state aid" of local schools, with generally little or no state supervision and control. A "drive" is on to increase this state subsidy. In Illinois the amount has been doubled since 1918-19.

It remains only to pass the Smith-Towner bill and this three-way arrangement soon will be in effect. Of course, the \$100,000,000 now proposed in the bill will not be sufficient to bring about this balance, but it will be a big step, and with constantly increasing amounts of "state aid" and with the local school managements in supreme control of the total expenditure of these revenues from all three sources, while being responsible only to a local constituency which bears *directly* only from a half to a third of the total burden, who can doubt that the national government will speedily be contributing seven or perhaps ten times \$100,000,000? Uncle Sam would contribute soon, at least a third of the total educational expenditures of the nation at large—and with nothing to say about efficiency or economy of administration, or even about uniformity of standards. The declaration in section 9 of the bill, that the \$50,000,000 is to be appropriated "to encourage the states to equalize educational advantages," becomes empty rhetoric in the light of the proviso from section 13, quoted above. Such financing applied to education would soon be extended to other functions.

What is to become of the taxpayer, under this triple alliance of tax rates, applied not only to education but otherwise? He will be between the upper millstone of state taxes, and the nether millstone of local taxes, while a new creation—federal taxes for local purposes—perches and gnaws at his vitals like a vulture. With the two great agencies of our Republic, the nation and the state, contributing two-thirds of the revenues locally expended, and having no control, no direction, no voice even, over their expenditures or in the local administration which they aid, what possible influence could they wield against extravagance? The taxpayer would pay his federal taxes in a lump for all purposes, feeling a stationary or an increased burden, instead of being gradually relieved of the burdens of war, and with nothing to indicate to what extent the tax upon his labor and industry was defraying the costs of local government and local waste. If he complained to a local official, the latter would proudly show him the local tax rate—producing only one-third of all the money he was actually spending, and say: "That's all your schools (or some other governmental function) are costing you. That rate's so low it's criminal. We ought to raise it."

It requires now a specially trained force of accountants some time to audit the accounts of a reasonably well-grown municipal corporation under straightaway local tax collections and disbursements. It takes our bureaus of public efficiency even longer to make the public understand what is really going on. It is, however, still possible for citizens to center responsibility and take the necessary political action occasionally when local finances have been unusually maltreated. Citizens can still manage to keep their local governments more or less in line a fair share of the time. What will happen to our local governments under a hodgepodge, complicated system of revenue, through which a man who combined the gifts of a trained accountant, a life-long public official and a life-long financier, could not hope to find his way? What greater camouflage for public accounts could be invented? Anyone in doubt about this would do well to read some of the criticisms on British "grants in aid" to which I shall presently refer.

There is another group of advocates of "Federal Aid" who do not object to federal supervision for their projects. Indeed, they would not really mind (so long as the financing was provided for the things they want done) if the federal government had a very high degree of supervision, perhaps more than would be to the liking of Americans generally. They are the ones urging new projects rather than seeking federal financing for well-established local functions. The point of view is different, but the objections to their ideas of federal aid are not less serious than those we have just noted. Baldly, the financial plan is that the federal government holds out a certain fund, upon which the states may

draw, if they will only set up the required specific machinery to carry on the activity fostered by the federal act, and comply with such conditions as the federal act may prescribe.

It is a bribe to extravagance. A state legislature may say: "We do not like the basic idea of this movement; it is socialistic; it is paternalistic; or, it gives to the federal government so much local supervision as to violate the fundamental principle of state sovereignty, upon which these United States were established and of that local independence which we deem essential to the perpetuation of democracy." Or it may say: "The idea is good, but in our commonwealth the work is being done adequately by private agencies or by existing public agencies, or by a combination of both, and it will require constantly increasing and quite unnecessary local expense to set up the machinery your federal act prescribes."

This is precisely the situation that exists in connection with the so-called Sheppard-Towner maternity bill and its proposed companion state legislative measures. Indeed, it was the study of, and the endeavor to block, the proposed Illinois maternity bills in our legislative session of last Winter and Spring, which led the Civic Federation of Chicago to direct me to begin an investigation of this whole subject of federal subsidies to local governments. The leading Illinois bill proposed to enable each county in the state to levy a special tax for the purpose of supplying to every woman in the state who might claim it, regardless of social or financial status, free medical and nursing care and attention for herself while child-bearing and for her children until the attainment of the age of one year. The bill was not sponsored, nor, so far as we could learn, endorsed by any of the charitable or child-welfare agencies of our community, either public or private. Even our Cook County commissioners, after consulting the county social service division, opposed it. It is our general observation that private charity is generally much more efficiently administered than public charity; that it is not susceptible to the same political wire-pulling and abuse. Added to this, we never had noted a public charity measure so lacking in saving limitations. Always there had been the requirement that only the actual necessities could be relieved out of public funds, and here was a measure proposing a substantial public service gratuitously, regardless of necessity. The only really comparable precedent we could find was in Australia, where since 1912 it has been the practice to award "benefits" to all mothers claiming them, and here we found that the "benefit" had been claimed and paid, for practically every child born, up to and including the year 1916, and that "when there were no extraordinary expenditures for war purposes, three per cent of the Australian governments' expenditure was devoted to maternity allowances" (Henry J. Harris, "Maternity Benefit System in Cer-

tain Foreign Countries," *U. S. Children's Bureau Publication*, No. 57, page 19). This was not reassuring. The Illinois special state health insurance commission, in its report to the general assembly, in 1919, covered the problem of maternity and infant mortality somewhat fully, and while it found that even with the progress which had been made in reducing the death rates, improvement seemed desirable, it recommended no specific legislation, beyond a further and special investigation of this field. Inasmuch as in most countries having maternity benefits, these benefits are a part of a public health insurance system and are upon more or less of an insurance basis (with the father or the mother or both as contributors to the fund), and inasmuch as the majority of the Illinois commission recommended definitely *against any form of state health insurance*, and the minority concurred in refraining from recommending maternity legislation, except a further investigation of maternity and infant mortality, it was inferred that the commission did not believe that the remedy for these mortality evils necessarily lay in the direction of public benefits or free medical care and attention for all mothers alike.

Christian Scientists, the Illinois state medical society, and the Medical Freedom people stood together opposed to the bill, on the grounds that it paved the way directly for infringement of individual liberties in the exceedingly personal relations of the home, and perhaps for the sweeping aside by the state of strong personal convictions, religious and otherwise; that it was entirely unnecessary; that it favored "state medicine" and threatened interference with freedom of personal choice; that it was paternalistic and socialistic in character and would undermine the foundations of individual independence, which had been the pride and the backbone of American citizenship.

The Civic Federation of Chicago, the Bureau of Public Efficiency and other organizations of taxpayers opposed this state legislation, on the ground that it was unnecessary, unsafeguarded against abuse; that it proposed to cover a field already rather fully covered by private and public agencies and to set up a piece of machinery that would be costly to start and burdensome within a short time.

With this mass and line of opposition the Illinois general assembly gave these bills little encouragement and would have given them even less consideration had it not been for the cogent argument of "Federal Aid":

"The people of your own state will be taxed for this fund, surely you would not deny to your own people some of the benefits for which they pay?" is the line of argument used by the advocates before the state legislatures.

This appeal is, of course, strongest to the less populous states, because they will get more out of the "pot" than they put into it,

but even with the larger states the tendency is to "go in", with the despairing notion that they will at least get something out of the wreckage.

Fortunately at this time, a hope and not a definite promise was all that these agitators could hold forth, or the results in Illinois—and in Massachusetts, where the Massachusetts Civic Alliance has been ably combating this propaganda—might have been different.

Promoters of these various "Federal Aid" measures meet objections to the principle by citing the fact that national "aid" for local functions has been a feature of governmental finance in Great Britain and in the leading countries of continental Europe for many years. Apparently they overlook some of the theories upon which these "grants" were established, the conditions under which they are supposed to be allowed, and the fact that after years of operation, even the most friendly critics complain of administration and fiscal results which cannot be highly approved, especially in England.

A survey of foreign experience and views respecting the intermingling of national and local finance should indeed be helpful to those charged with responsibility in our own government.

The "grants in aid", as they are termed in Great Britain, were at first devised for the practical end, not of encouraging a necessary function in a young country, nor yet to get more and more finances for some local government, as in the United States, but actually (amazing as it must seem in our own country and age) to aid the citizen, the local ratepayer, by making possible a decrease in local tax burdens. Moreover these grants carried with them an intended degree of national supervision or control, which would shock painfully the backers of the Smith-Towner bill. Two British economists, moreover (Sidney Webb and J. Watson Grice), who are avowedly friendly to the principle, have agreed upon a theoretical basis for this phase of public finance, which (except possibly as to the first point) would appear rank heresy to the modern American advocate of "Federal Aid".

Sidney Webb (*Grants in Aid*, 1911, p. 15, o/s.) says (discarding the relief of local taxpayers as an unworthy basis) that the case for "grants in aid" rests upon four grounds:

1. Necessary to prevent an extreme inequality of burdens between one district and another.

2. Of even greater moment than equalization of burdens, they are needed to give weight "by suggestions, criticism and authoritative instructions by which the central authority seeks to secure greater efficiency and economy of administration."

3. They furnish the only practicable method, consistent with local autonomy, of bringing to bear upon local administration the wisdom of experience, superiority of knowledge and breadth of

view which, as compared with the administration of any small town, a central executive department cannot fail to acquire, for the carrying into effect of the general policy which parliament has prescribed.

4. "Only by this means can we hope to enforce on all local authorities through the Kingdom that 'national minimum' of efficiency in local services which we now see to be indispensable in the national interest."

The growth of these national subventions in Great Britain was further stimulated from the fact that, lacking the inherent independence of the federal government enjoyed by our own sovereign states and their subdivisions in local matters, the British local governments were called upon to perform many services for the national government. For example: We maintain a separate federal judicial and penal system, and bill the United States government for temporary entertainment of federal prisoners in local jails or penitentiaries, but Great Britain demanded and received this service from the localities until the burden became so great as to constitute an injustice, and in lieu of some business-like compensation a "grant in aid" from the national government was voted.

Lax, extravagant and scandalous administration of the "poor laws" brought about one of the earliest (and most increasingly expensive) of the British grants, after attempts to exert national influence for reform merely by force of laws giving centralized administration had failed. (Grice, *National and Local Finance*.) During the period from 1842 to 1908, Grice (*ibid.*, pp. 364-5), lists among the major objects for which national subventions were granted, either through actual appropriations from the national exchequer or through allowances from all or part of certain specific revenues (definitely set apart for specified local purposes under the "reforms" of 1885); Metropolitan fire brigade, Dis- turnpiked main roads, Agricultural grants, Poor relief and health work, Criminal prosecutions, Police, and Penal and Reformatory expense. Under each of these were many considerable sub-items, and the cost to the national government grew for England and Wales alone, from £244,402 in the fiscal year 1842-3 to £8,559,342 in 1907-8. In addition is the very large grant in aid of education which, beginning with £20,000 in 1833, rose to £927,524 in 1871 and to £10,854,889 in 1907-8. Writing in 1911 (*Grants in Aid*, pp. 37-8), Webb reports for the United Kingdom educational grants of £16,405,903 and a total of all grants of £28,820,223, and estimates that the corresponding total for 1911-12 will not fall "far short of thirty millions sterling", with the "total issues from the exchequer in respect of education, approaching pretty nearly to twenty millions sterling".



Since then large major items, in keeping with the sweeping demands for social legislation characteristic of the period, have grown to larger proportions or been added. I cannot give a complete list but will note as significant—State health insurance, and the “aid to the unemployed”, under which we read in the current newspapers under London date line, that “the Islington Board of Guardians which sat for the first time to give out relief under the ‘better be a pauper than work’ rule, which gives the unemployed head of a family \$20 weekly from the taxpayers’ pockets, was swamped by applicants. More than 3,000 persons made application during the day, and as many more are expected tomorrow.”

All this growth in England has not been without the notice and criticism of economists and of responsible public men. The national revenues, as has been largely the case in this country, were principally derived from imposts which, directly and indirectly bore upon the labor and industry of the people as a whole, whereas the local taxes for the most part fell upon the large property owners. As early as 1847 or 1848 these national grants in aid were attacked by radicals, on the ground that they relieved land and laid a heavy burden, direct and indirect, upon the people generally. Between 1852 and 1872 the total grants in aid of local authorities was estimated to have increased from £500,000 to £1,146,000, and by 1875 to £2,250,000.

During the ensuing period from 1874, says Mr. Grice (*National and Local Finance*, p. 70), “the burden of the old rates greatly increased, especially in urban areas; new charges in respect of education and sanitation fell mainly upon the same districts; the agitation of the overburdened town-dwellers who had thrown in their lot with the agricultural interests grew more persistent; the relief granted from the exchequer, by transfer of services or subventions in ‘aid’ enormously increased, and the complexity of national and local finance became correspondingly more intricate and involved.”

By 1885 these various subventions totaled £3,389,000 and the bearing of their increase “on local expenditures and on the general incidence of taxation for local and national services bulked largely in the discussions”. In the next few years Mr. Goschen led in securing certain “reforms”, through which he hoped to systematize and simplify the chaotic system which had grown up and held out the old but ever-new promise of “tax relief”. Mr. Goschen’s proposals appear to have embodied an idea something like our “separation of revenues” theory—now discarded as unsound.

Mr. Gladstone was not so optimistic as Mr. Goschen about the advantages of continuing the system, or the possibilities of reforming it. He urged that no further relief should be granted through the “consolidated fund” until a complete scheme had been en-

tered upon for the reform of local government. His chief objection to the general principle of grants, according to Mr. Grice (*National and Local Finance*, pp. 79-80), lay in the fact that the "subventions had allowed of the local authorities being pressed or forced to much augmentation of expenses". In the discussions, however, Mr. Gladstone\* voiced this further objection: "the transfer of rating charges to the exchequer, in whatever form it is done, is a question of the transfer from a fund supplied almost entirely by property, to a fund supplied in a very large degree by labour. Every time we place a grant in aid upon the consolidated fund we commit the offense of laying upon labour a very large proportion of the charge heretofore borne by property."

Mr. Goschen's views prevailed in general, however, and an attempt was made to simplify matters by setting aside all or parts of certain specified sources of revenue originally enjoyed by the national government, for certain services performed by the local governments.

The results, according to Grice, writing in 1910, and Webb, writing in 1911, do not seem to have justified Mr. Goschen's hopes. Says Mr. Grice:

"The cloud of mystery in which the financial relationship of the central exchequer to the local bodies had become enveloped might almost be regarded as the first line of defense of the complicated system, the second being the vested interests in the distribution which had meanwhile grown up.

"The aim of Mr. Goschen, which was to provide local sources of revenue for admittedly local purposes and to assist services which it is advisable should be locally administered but in which the nation as a whole had an interest, from the exchequer, meanwhile keeping local and central funds entirely apart, was 'unquestionably founded on broad and sound principles'. But, unfortunately, these objects were not realized.

"The simplicity and clearness of both national and local acts, one of the chief ends in view, was certainly not attained; the change only made matters worse. For purpose of comparison with years previous to 1888, to trace the growth of expenditures in any particular service double statements were necessary, inasmuch as part of the yield of certain revenues was brought into the national accounts, the other portion appearing only in the local accounts.

\* Sidney Webb, who, as we have noted is a friend of the "grants in aid" principle, attempts to dispose of Mr. Gladstone's objections by saying (*Grants in Aid*, p. 9): "To Mr. Gladstone—who never to the end of his days realized either the importance of local government or the superiority, in social value, of administration, over House of Commons 'politics'—all the grants were alike 'doles', mere vexation of spirit, raids on the exchequer by the agricultural interest, a wanton encouragement of 'extravagance' by which term he meant merely any increase of expenditure by public authorities."

To make confusion worse confounded, the central authorities' liabilities in respect of payments in relief of rates which did not appear in the finance accounts so far as they affected England—being met by revenue which was diverted into the local taxation account—yet did appear, but for a part only in respect of Scotland and Ireland. . . . As a consequence, the national accounts failed to show the entire and true expenditure for which the central government was responsible. . . . Moreover, the exchequer accounts did not show the total relief afforded to the ratepayers by the central government."

"As a result of these complications the local authorities are today in receipt of aid from the central government, which arrives by one or another of three routes:

"(1) Direct from the central exchequer, without any association with the system of assigned revenues, i. e. grants for education, for industrial and reformatory schools under the Home office, and for unemployment, the central authorities administering the grant directly and retaining the entire control in its own hands.

"(2) Direct from the central government out of the assigned revenues, e. g. grants under the agricultural rates act and for police pensions, of which the former is a substitute, granted to the standing authorities for local revenues derived previous to 1896 from holders of agriculture, and is practically a fixed amount bearing little relation to present assessment and in reality is a general grant in aid of general expenditures.

"(3) From the exchequer contribution accounts of counties and county boroughs (which receive the remainder of the assigned revenues)." (*National and Local Finance*, pp. 95-99.)

Mr. Webb, after outlining the purpose and theoretical merit of the Grant in Aid and stating that, "according to the conditions and stipulations that are attached to the Grant in Aid, so will be, whether or not we like it or foresee it, its effect on public administration," goes on to say:

"So little have these facts been realized by those who have devised our financial subventions, that we find existing today all sorts of Grants in Aid, for all sorts of subjects, allotted to the local authorities in all sorts of differing proportions and under all sorts of conditions, which very often tend to counteract and nullify each other. The whole field is a chaos which practically no one understands—certainly no ordinary town or county councillor or member of a board of guardians. I have neither space nor patience to set forth even a tithe of the complications and absurdities that have grown up, though a considerable number of specimens will be found in the subsequent pages." (*Grants in Aid*, p. 7.)

"There seems to be among the official publications no comprehensive or comprehensible statement, setting forth all the various subventions from the exchequer to the different local authorities of the United Kingdom. . . .

"One difficulty is that we have to consider separately that which

is paid by the exchequer and that which is received by the several local authorities. Out of the total of nearly thirty millions a year, something approaching twelve millions is paid into the local taxation accounts for England and Wales, Scotland and Ireland respectively; and thence distributed to the local authorities, part of it, indeed, to some local authorities only as conduit-pipes to other local authorities. On the other hand, the Education Grants, the Industrial and Reformatory School Grants, the Distress Committee Grants, and various contributions in lieu of rates are paid direct to the local authorities concerned. Moreover, in some cases, the grants payable to local authorities are accompanied by other subventions for similar service paid (as for some industrial and reformatory schools in the United Kingdom, and for all elementary schools in Ireland) *direct to voluntary organizations unconnected with local government*.

"The complication of the local taxation accounts dates from 1888, when Mr. (afterwards Viscount) Goschen undertook to simplify the financial relations between the exchequer and the local authorities, and to make their finances mutually independent. With this object, and altogether ignoring the purposes and results of Grants in Aid, to which reference has just been made, he induced the House of Commons to substitute for the multifarious separate Grants in Aid then borne upon the exchequer, the assignment of certain revenues (local taxation licenses, and a proportion of the estate duty), by which, as it was hoped, all Grants in Aid would be met. In that way, it was assumed, the treasury would be freed from the burden of an uncertain and steadily rising charge, which inconvenienced the framers of the national budget. From the outset, however, the scheme was applied only to less than half of the total Grants in Aid. The large and growing education grants and the less important grants for industrial and reformatory schools, together with the miscellaneous contributions in lieu of rates, etc., were left untouched. The treasury was accordingly not freed from the inconvenience and uncertainty caused by the varying annual increases in the grants, whilst the mutual independence of central and local finances was in no way secured. And the arrangement was promptly upset in other respects. A large addition was made in 1891 by the assignment to the local taxation accounts of the equivalent of the increased duties on beer and spirits, which were allocated among the local authorities on a new and perplexing basis, which nobody understood. Five years later came the Agricultural Rates Act of 1896, under which a certain class of property (agricultural land, apart from farm buildings) was to be assessed at half its annual value only; whilst in lieu of the annually increasing deficiency of income thus caused to the local authorities, a fixed sum was to be paid to the local taxation accounts for this distribution, upon yet another basis of allocation. We need not trouble to mention minor changes, or the Scottish and Irish equivalents of what was done for England and Wales, which have together brought the total receipts of the local taxation accounts from a little over seven millions in 1889-1890 to nearly twelve millions in 1911-1912; and yet have left the local

authorities as they, with some force contend, financially in a worse position than they were in at the former date. . . .

"How exactly the money is paid out of the local taxation accounts, and especially on what basis the several grants are allocated among the different local authorities, seems past all finding out. . . .

"Apart, however, from all the local taxation accounts, we have the far larger Grants in Aid administered by the Board of Education for England and Wales, the Scotch Education Department, and the Commissioners of National Education in Ireland. These grants, dispensed among a dozen different heads, amount apparently, for the United Kingdom (including the grants to 'national' schools and voluntary training colleges in Ireland), to more than sixteen millions a year. It adds to the confusion that besides this large sum, other grants for education are issued out of the local taxation accounts, as already described, to the extent of some £900,000 for education, other than elementary (the so-called 'whiskey money')—now to be temporarily made up of a larger sum—£24,946 for teachers in Poor Law Schools, etc., £264,868 for various kinds of education in Scotland, and £87,806 and £7,910 for other kinds in Ireland. . . .

"There remain certain anomalous payments. Among these are the contributions in aid of the expenses of the Central (Unemployed) Body for London and the District Committees in 120 other towns, acting under the Unemployed Workmen Act of 1905. These—our modern recognition, in the most foolish way, of what is called the 'right to work'—amounted in 1906-7 to £219,065 for England and Wales, £47,253 for Scotland, and £13,750 for Ireland, a total of £280,068."

After ten pages detailing the involved system of distributing the national Grants in Aid of education alone in Great Britain, Mr. Webb says:

"I hope that I have got all these complications right; but it is impossible to feel sure! One thing is certain. No member of an education committee, and no member of the finance committee, having to control the estimates of an education committee, and no alderman or councillor, responsible for passing them, even hopes to be able to master the intricacies of the Grants in Aid on which from 35 to 60 per cent of the income available for its work is based. Quite apart from any question of amount, or the inequality of distribution, the local authorities have a real grievance in the incomprehensible intricacies and unnecessary complications in which these education grants are involved. . . .

"It is desirable that some inquisitive member of Parliament should ask the Government to present a comprehensive return, showing the total amount receivable from the exchequer, in aid of any form of educational work, by each local education authority or school board or other public body exercising educational functions in the United Kingdom, and the basis of allocation or conditions upon which such grant or subvention is made; together with

similar information with regard to each school (whether day or evening, elementary or secondary, industrial or reformatory), training college, technical institute, university, university college, or other body not being a local governing authority, similarly subsidized from the exchequer. I believe . . . the variety and complexity of conditions to be even greater than this chapter has sought to reveal." (*Grants in Aid*, pp. 27-28-30-34-37.)

Another English writer (Richard Higgs) is by no means so lenient with the principle involved. In his "Control of Public Finance and Officials", he says (p. 176):

"Ratepayers being heavily burdened through muddled and extravagant financing and long neglect of problems of policy, go to a good kind government to help them; the government, being quite willing, puts extra taxation on the same people to relieve the rates, and they all gaily walk about 'finding new sources of revenue' and 'broadening the base of taxation'. . . . It seems almost incredible when looked at as an ordinary business proposition, that people should go to one set of their own paid servants to ask for their own money to pay the extravagant charges of another set of servants. What is wanted in public finance is not broadening the basis of taxation, but narrowing the basis of unbusinesslike extravagance.

"Of all the various anomalies and complications to be found in these public financial statements, one of the worst to my mind is the system of government grants. Grants appear to be made from national funds for a number of local services and the payments are the most difficult to understand. These grants to my mind are utterly demoralizing to the Government and to the local authority alike."

Henry J. Harris, who is reported to be an advocate of "federal aid", at least as proposed in the so-called Maternity bill, says of this same grant in Great Britain (*Maternity Benefit Systems in Certain Foreign Countries*, p. 68):

"To describe the British system and to analyze the experience under it is an extremely difficult task; no other system of social insurance now in existence is so involved and contains so many features perplexing to the uninitiated. . . . Furthermore, the statistical information published in the reports on the operation of the system is so scanty that one receives little additional light from that source."

Now in the face of this mass of evidence from a nation that has labored with (or more accurately, labored under) the problem of national "aids", for almost a century, and with plentiful indications that our own beginnings in the same field of finance are tending toward the same rocks and shoals of which the British critics write, how can any sane officer of the United States Government, executive or legislator, with any sense of responsibility

to the people, favor or promote any further extension of our own "grants in aid" until we have at least taken our bearings and faced certain fundamental questions of governmental policy?

To begin with, should we not compare our form of government in the United States with that of the United Kingdom of Great Britain and of the several European countries which have experimented with national subsidies? On the one hand, we find in France, Germany, Belgium, Austria, and generally throughout continental Europe, what Grice and Webb called the "bureaucratic system", in which local administration in the main is entrusted to salaried officials, who either are actually appointed by, or at any rate, whose work is closely supervised by one or another of the main departments of the national government. These may become local governing bodies but their functions generally are rather narrowly limited. At the other extreme, says Webb, "stands the organization of local government in the United States, which may be termed the anarchy of local autonomy, and which has given the United States the worst local government of any country claiming to be civilized." With a sense of satisfaction, rather characteristic of his race, and rather amusing, in view of his criticism of the system he here lauds, Mr. Webb goes on:

"In the United Kingdom we have, by characteristic good luck, stumbled on a third arrangement. . . . By the unselfconscious invention of Grants in Aid, we have . . . devised a new kind of relation between local and central government, and created a new species of administrative hierarchy, which has attributes of its own, and which, with our particular kind of local government, produces results, in a remarkable combination of liberty and efficiency, on the whole preferable to the achievements of either the Bureaucratic system of France and Germany or the American anarchy of local autonomy." (*Grants in Aid*, pp. 5-6.)

Mr. Webb may be perfectly correct in thinking that a system of national grants in aid (if its tangles could ever be straightened out) may be the thing necessary to hold together in efficient operation the local governments of Great Britain. Governmentally they differ widely from us. Certainly, however, he fails to understand the basis of our divisions of government if he supposes that the imperfections of our local governments arise from lack of coordination through national control. The trouble with our local governments is that there are too many of them, that they overlap and duplicate, and are therefore expensive and involved. Our counties and cities, however, are far from autonomous. Almost universally the state retains either the authority to grant (subject to revocation) powers of local government, or to check those which a municipality, having certain so-called "home-rule" powers of initiation, may have assumed. As to the relationships

between the states and the nation, the nation, deriving its being and sole authority from the states, has always held, nevertheless, a sufficient control both of interstate matters and of matters which (thus far at least) seemed vitally to involve the national interest. to keep the state governments and their citizens in check whenever that course has been necessary.

During all the years of our development, years of hardship and handicap, with sparsely settled country, with more "poor corners" in it than there are today, we got along with a comparatively simple system of finance. The federal government financed its functions, the state financed its functions, and the localities, as they came into being, financed themselves.

If now, our civilization has advanced to a point where the nation must do things which heretofore the states and the counties and cities have felt competent to do; if the functions of local government are becoming so burdensome that they can no longer be locally financed, then, indeed, it is time to see what federal financing of these heretofore local functions will accomplish. But let us be very sure.

Also, let us make it clear that if the local government has come to a stop, where it can no longer carry its own burden and must turn to the national government for aid, we want none of the muddled financing which has burdened Great Britain. If Uncle Sam has to finance a function, then let it become a federal function, federally financed and federally controlled. Also, before the financing is undertaken it ought to be clearly demonstrated that the function is one of national importance, the neglect of which would materially diminish the general welfare of the country at large.

"The federal government should appropriate only for those interests which are purely of national concern and clearly within the purposes for which the federal Union was established," said the Honorable Frank O. Lowden, Illinois' great and constructive "War Governor", in delivering the convocation address before the University of Chicago in June of this year, in which he warned of the ambitions of Washington bureaus and the dangers of federal and state "Aid".

Let us ask ourselves specifically what local governmental functions are federal in character and can no longer be adequately supported by local taxation. Does education qualify? The supporters of the Smith-Towner bill say: "Yes, because illiteracy is a curse which blights all citizenship and ignorance, bred in some far-off corner, may be translated into vice or crime in some highly developed center of population." But after struggling all these years and gradually getting the better of illiteracy, with the remote corners of our land growing fewer each year, with the extension of the rural school and the raising of educational standards, not



by any centralized control but by the devoted men and women of the educational profession and their professional organizations, is this the time to throw over the system of state and local organization (mainly local) which has brought it about? Shall we either revolutionize it by federalization, or ruin it by an extravagant, unscientific and irresponsible system of muddled finance and control? And can the local governments no longer properly finance their schools? Some extravagant school boards may agree to this. The average citizen will not. The average citizen will willingly bear more taxes for the support of education than for any other object of government. He does, however, like efficient and sane management. Will he get it and will the schools be any better off under federal "Aid" than they are now? By no means. In Illinois "State Aid" is in the form of a state distributive fund, dating back to the time when the state was exercising actively her constitutional duty of providing a good common school education for her children and when the proceeds from this fund constituted fully sixty-five per cent of the total common school revenues raised in Illinois. With the development of the local schools this fund became for many years of less relative importance and for a decade or more produced, through a mill tax or appropriation in lieu thereof, about \$1,000,000 a year. Then there developed the complaint about the poor school district, called upon to educate the children of people employed by a mine or other industry lying just across the border of the district and contributing no taxes to the school. However, the distribution of the fund on a basis of school population sent money into districts and cities, like Chicago, perfectly able and willing to support their own schools, without giving the measure of relief needed by the poorer school districts. Demands for tremendous increases in the fund are heard (in 1919 it went from \$4,000,000 to \$6,000,000, instead of to the \$8,000,000 demanded, and this year to \$8,000,000 instead of to the \$20,000,000 demanded); yet although it is admitted that to increase the fund to \$20,000,000, on the present basis of distribution, would still leave some poor districts in want, the school people united in defeating certain constructive reforms sought by Senator Herbert S. Hicks of Rockford.

This gives us a fair sample of what might be expected from "federal aid" especially under the denial of federal supervision carried in the Smith-Towner bill. There can be no assurance of remedying the (diminishing) ills complained of, and there is every reason to anticipate lax expenditure and constantly growing demands for more revenues, national, state and local.

Are roads a proper activity for federal "aid"? They might be considered, if at all, on the ground that their importance in times of war and national emergency has developed with the development of the motor transportation. This already is our largest

federal subsidy and probably it will be difficult to abandon it, even were it desirable. Certainly, however, if the national government aids in road construction it should insist upon a maintenance of national standards both in construction and upkeep.

Should the administration of justice become a matter of financing and should our local courts and prosecuting officers be subordinated to the federal system? Should we add to this the entire machinery of law-enforcement, and subsidize our local police, as is done in England, France, Belgium, Germany and elsewhere abroad?

Should the federal government be called upon for help in local matters of public charity and supervision of the public health, at a time when local governments are giving more attention to the latter than ever before, and when the privately organized agencies for charity are cooperating with one another and with the proper public agencies, with results of efficiency never dreamed of in days past? In this field, indeed, which includes pointedly the activities aimed at by the Sheppard-Towner Maternity bill, the federal government should proceed most cautiously of all.

We well may weigh the comment of Mr. Higgs (*supra*, pp. 194-5) that "philanthropy will not mix satisfactorily with public finance because the finance of philanthropy is on an altogether different footing from compulsorily collected rates and taxes." As American citizens we probably are not ready to relieve a man from the care of his family and himself, either through the wholesale grants in "aid" encouraged by the Sheppard-Towner bill or by grants in "aid" of unemployment, which are otherwise proposed. Most self-respecting Americans probably will not agree with the quotation from Floyd Dell (*Feminism for Men*) given in the *Woman Patriot* of June 1—"A man is not free until he can tell his boss and his job to go bark at one another; . . . and he cannot do this so long as a woman and her helpless offspring depend upon him for support." Citizens willingly will contribute to help needy mothers and babies, but not to aid families for whose care the father can, and should be, held responsible.

Also we should consider that in this field there is the greatest danger of violating our great principle of "taxation for public purposes only". Webb notes that parts of certain grants find their way to voluntary boards and managers. (*Grants in Aid*, pp. 34, 36 etc.) Part of our own grants for research work in venereal diseases go to privately controlled universities. The Sheppard-Towner bill carries a broad provision as to extension lectures on maternity hygiene, which it is believed might authorize the payment of funds not only to private universities and institutions, but possibly to social settlements and the like.

The question of incidence of the burden of extended federal subsidies also arises sharply. Gladstone pointed this out in Eng-

land, and one wonders whether the recent reported "strike" of the Poplar Borough Council, which refused to levy upon the inhabitants of Poplar the taxes demanded by the London County Council, is by any chance a fulfilment of the vision which prompted his warning. In America at present, it is safe to say that the direct federal taxpayers in most states far outnumber the direct payers of state and local taxes. To relieve the hardships and bad economic features of the highly graduated income and profits taxes there is vigorous demand for some system of sales taxes, and these would tend to spread the direct burdens of the federal government still more broadly among citizens. Under these circumstances it is hard to see how politicians can expect extensions of federal "Aids" and consequently of federal tax burdens to be well received by the majority of the people.

The whole problem of our fiscal system seems to be involved. None, presumably, will suggest that we "muddle through" as the British have done, and as we have started to do. Shall we, then, adopt the highly centralized French system, with a Court of Accounts, consisting of life members appointed by the President of the Republic, and empowered to audit and survey the entire accounts of the nation and its "departments, and of communes, whose annual revenues exceed 30,000 francs"? That might insure some reasonable degree of efficiency and safeguard against extravagance, to which we are clearly entitled if we are to embark our national government in the business of financing schools, poor relief, medical aid, unemployment doles and old-age pensions, as is done abroad. And, if we are content to submerge our traditional independence of local government to that extent, should we not secure the benefits of a simplification of our revenue system, whereby all taxes for all purposes should be levied and collected by one agency and distributed as dictated by the national government?

Or, shall we cling as closely as we can to the present distinctions between the nation, the state and the local governments and their individual fiscal systems, limiting federal "aids" to grants perhaps in reparation, to states whose taxable lands may have been set apart for government use or conservation, and to such existing grants as cannot be disturbed?

Until those questions are fully considered and a sound national policy as to the proper scope of federal appropriations is established, Congress has no moral right to create a single new federal subsidy to local governments, nor to increase existing appropriation of this character. Each step taken in the absence of such a survey is a step toward chaos.

Gladstone urged a halt, pending such survey for England in the 'eighties. Webb in 1911 made a plea for "adoption of some intelligible principle". Those pleas were unheeded and in England it may be too late. There is time to save America if Congress will act wisely and deliberately.

CHARLES J. TOBIN of New York: I have something I should like to say about this subject, if I may be permitted.

CHAIRMAN BLISS: The chair was about to announce that a short time would be allowed for discussion. The time is very short, as you all know, and you will all have to hurry.

MR. TOBIN: I have given some time to it and if I cannot say it all I should like to put what I have to say in the record.

CHAIRMAN BLISS: We will give you a large part of the time we have.

MR. TOBIN: I don't want any more time than I should have, because I know you are short of time.

Mr. Chairman and gentlemen: From the very beginning, the history of the human race is the record of a bitter conflict between those invested with authority on one side and those subject to it, on the other. Two mighty forces have been working in human society—the greed for power and the love of liberty. Against the constant tendency of the state to enlarge its dominion and invade the rights of its subject stands another tendency, just as constant—the tendency of the people to defend their liberties and ward off encroachments of their oppressors. Hence, there has ensued an age-long strife between despotism and democracy, between the supremacy of the state and the freedom of the individual.

In the great nations of antiquity, men were slaves because the sacred value of life was ignored, and even today the world has witnessed the destruction of old dynasties and aristocracies. It was because atheism and infidelity have clothed them with omnipotence, which crushed the individuality of their subjects until they arose in their might to claim that liberty which should be theirs as human beings.

Even here in America we are not immune from this influence which in European countries had sacrificed the individual for the state. Centralizing tendencies, characteristic of empires and of despotic governments, have been steadily weakening the purposes of our democratic sovereignty. Old world fashions and policies have gradually taken root here, and to this can be traced the origin and growth of the tyrannical elements in the law-making bodies of the land, so that, in our own political history, we find confirmed the truth that human liberty and human worth stand or fall together.

By the noble patriots who framed our Constitution and laid so firmly the foundation of our republic, man's exalted dignity was recognized and the personal freedom of the individual was deemed a glorious boon, to be extended and protected. Thus, in making laws for the land, our forefathers provided for their fellow coun-

trymen the fullest freedom in working out their eternal destiny. Rejecting the absolutism of the Bourbons, the Hohenzollerns and the Guelphs, they established in this new world a democracy; "a government of the people, by the people and for the people"; and in immortal words, they declared that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.

These fathers of our country declared that the state exists for the individual; that the government is the servant of the people, based on their consent and answerable to them for its conduct; that its authority over the individual must be measured only by the demands of the public welfare, leaving to every citizen the possible sphere for the free exercise of his personal initiative.

Such was the spirit, in which the great democracy of America was born; that spirit that honors manhood; that spirit that favors freedom and frowns on despotism, and any spirit other than this is not the spirit that stands behind the traditions and laws of this land.

Upon this point too much emphasis cannot be placed, for our democratic institutions are endangered by the present tendency of the state to increase its power and to absorb the individual in its paternalistic legislation. The forces, which have produced Cæsarism and despotism in other lands, have made their appearance among ourselves, and each year we witness attempts to unduly exalt the state and, by so much, to degrade the citizen. Everywhere there is a passion for uniformity and centralization; and yielding to that passion, we create bureaus and commissions, each one of which means a restriction upon the sphere of independent individual activity.

As though civil power or authority was a personal right and not a public trust, the state seeks to exaggerate its importance and, in its legislative measures, manifests an arrogance not in keeping with the genius of the American Constitution. In the industrial field, it is attempting to weaken excessively individual management and enterprise by immoderate governmental control. The work of charity and reform, it is gradually controlling or taking over altogether from private concern. Over the schools themselves, public and private, its power, day by day, is developing into a monopoly.

A grave political and social danger lurks beneath this un-American tendency of the government to enlarge the area of its activity at the expense of popular liberty. We are never very far from the old pagan idea that the state is a god and that for it the individual exists. Indeed, there are among us today leaders of public thought, who teach that the state is omnipotent and that it is above all law; that in its jurisdiction it has no limits.

In the mouths of these teachers such a political philosophy is

perfectly natural and logical. For them, man is a mere creature of flesh and blood, and thus they make the state a paternal agent, a kind of earthly providence, directing every phase of man's activity and, like a recent Prussian State, thrusting upon him all that it decides to be necessary for his welfare.

For these reasons we, as citizens of this country, jealous of its welfare and cautious of our own liberties, stand opposed to every tendency that makes for absolutism in the state. Towards this direction, nevertheless, we in America are constantly drifting. Each year the volume of over-legislation is increasing. The sacredness of human rights is ignored and the state is regarded as an object of worship, the one supreme authority in society. This is the czarism of Russia and the Prussianism of Germany reproduced, and, as such, we resist it because it is disastrous in its consequences and false to the spirit of American traditions. Here in America we cannot hope to escape the penalty, which other nations have paid, for, as they, we will sacrifice the things that we value most, liberty, individuality and religion, and, by exaggerated organization and centralization, allow the state to become an instrument of tyranny in the hands of those who make our laws.

This spirit is vitally and primarily important to us, because of the centralization of power in almost every department of life and the necessary functioning of the federal bureaus, which must be established to continue the work, brings with it the enormous expenditure of public funds, which they will require.

The motives for asking for federal aid are as varied as are the views of different persons and societies, which ask for federalization of governmental functions. These motives range from distinct selfish interests by groups of business men to that of the worshippers of bureaucratic standardization or even of revolution and socialism.

The selfishness and ignorance of this unrestrained group received this merited rebuke from President Nicholas Murray Butler of Columbia University; "Destructive and reactionary forces are actively at work to turn our representative republic into a socialist autocracy, to destroy liberty and equality of opportunity and to paralyze the greatest force that the world has ever seen for the promotion of the happiness, the satisfaction and the full development of free men and free women. What we have defended against German aggression and lust of conquest we must now band together to protect against those more insidious but no less powerful enemies who would undermine the foundations on which our American freedom rests. It would indeed be a cynical conclusion of this war if we who have helped so powerfully to defeat the German armies on the field of battle should surrender, in any degree, to the ideas that had taken possession of the German mind and that led the German nation into its mad war against the free world.

"The most pressing question that now confronts the American people, the question that underlies and conditions all problems of reconstruction and of advance as we pass from war conditions to the normal times of peace, is whether we shall go forward by preserving those American principles and American traditions that have already served us so well, or whether we shall abandon those principles and traditions and substitute for them a state built not upon the civil liberty of the individual but upon the plenary power of organized government."

Under the guise of federal "aid", groups of self-appointed social reformers and political overhaulers are seeking to establish governmental bureaucratic control functions, which were never contemplated by the fathers of the republic as necessary or proper for federal control.

A list of the projects for which federal aid is being urged would be surprisingly long, but it is not necessary for our purpose. It is with a method of attainment that we now take issue, for in many instances we are confronted with a determination to "put over" a raid on the treasury by a stampede of public appeal. It is quite difficult to overcome the oft-repeated pleas for Soldier-Settlement, Improved Highways, Public Employment, Service, Americanization, Illiteracy, Conservation of Natural Resources and Man Power, Housing, Child Labor, Education, and many others, *each requesting its billions*.

The chief issue is now drawn between two lines of future development: (1) Exercise of personal discretion by all citizens in the vote, and control of public welfare projects, or (2) surrender of all such personal discretion to federal bureaus, manned by political appointees and empowered to rule or wreck—according to personal ability or bias or whim—the effects to be nation-wide rather than localized.

Senator Thomas of Colorado, in assailing an amendment, providing a fund of \$200,000,000 to be used by the government in the construction of public roads, to be made suitable for transportation of mail, said: "It is our custom to proceed by a method of almost inexorable progression in our attacks on the outposts of the United States treasury. But attacking in broad daylight would be too dangerous, so we attack by sapping and mining. The 1916 act was justified by its advocates on the ground that the Constitution authorized the maintenance of postroads. Many of the ablest of our forefathers disputed any such proposition, but that was in the days when states rights really meant something and the people of the state were too jealous of these rights to trade them off for federal money."

The state educational systems are also the objects of a 50-50 federal "aid" plan, which the school teachers are favoring. Is a federal bureaucracy so certain of efficiency; is the teachers' union

so sound in the social and political doctrines which it teaches to the young that one individual appointee is to be allowed to mold the plastic minds of the children of the entire nation?

In commenting on federal "aid" for education, the *New York Evening Sun* stated editorially that "this project is but a step further towards paternalism, in line with the desire to hand over everything to the federal government to the detriment of individuality and of the states. From every aspect, it looks like a 'job'. It must create a larger bureaucracy with many fat positions and a massive pay-roll; a new army of office helpers. We have quite enough of that already."

Federal "aid" is a mighty insidious and illusive phrase. Do the taxpayers, do the dealers and investors in the tax-exempt securities, with which aid is financed when taxes fail—do any of us quite know what we give up in order to receive what many regard as a largess from Washington? Financially, federal "aid" confers no largess. The munificence is charged back, sooner or later, to the taxpayer. Too often the aid is a mere cloak to cover a grant from the public treasury to some favored person or community, which should be equitably assessed, according to the benefits received. As a matter of fact, the federal government has no present income with which to confer aid. Rather, more tax-exempt bonds or new levies upon the nation's income are inevitable if we plunge further into such projects or it is quite possible that the new levy would take the form of a national tax on real estate. The resulting extra appropriations by the state and localities, with its consequent waste and inefficiency, or other systems of mandatory legislation will only raise the popular cry for "home rule".

Lack of responsibility is the great evil in our political system. Could it be made weaker than by further dividing authority between local, county, state and national officials as, for example, in educational matters? Our secretary of state, Charles Evans Hughes, sums this up in a very telling and striking address, in which he says: "In connection with the prosecution of the war we have practically obliterated state lines. Does this mean that as we return to peace we shall find our federal system irksome and anachronistic? The people, who are instinct with the love of freedom, cherish local self-government. The right of self-determination inheres in the local community and we mouth vain words in talking of the rights of small states, of self-determination, and of the priceless liberties of mankind, if we do not recognize that it is precisely the freedom from outside control in purely local affairs which is the essential foundation of democratic institutions. I believe that we are not disposed to surrender that principle."

A good government, like a good machine, will measure its efficiency in inverse ratio to the friction it creates. A frictionless government will be one hundred per cent perfect and a frictionless



machine can never be created by continually adding parts; nor can a government, attempting to legislate the individual out of existence, expect that in the long run there will be no trouble. The government should remember that, within certain limits, "that government is best which governs least". When the government attempts to be omnipresent, especially where the question of the personal liberty of the individual is concerned, it challenges equally the disobedience and the contempt of the individual. The policeman is not as important to society as the physician, and the present effort to make him so, will inevitably call forth the rebel in our country.

In addition to any standing graft and inefficiency, the American political system is now guilty of the cardinal sin of over-development of its power. Like a child, its eyes are larger than its stomach. The present plan of governmental gluttony cannot long proceed without serious organic trouble setting in. The remedy is not clear, nor are the causes of evil. The chief internal remedies would seem to be a narrower interpretation of the police power of the state, the adoption of certain means of which the individual might avail himself when his present liberty is put in jeopardy by legislative action and finally, a codification of national law.

C. A. DYER of Ohio: The gentleman from Georgia said that in the South they held up Ohio as the horrible example in the United States in matters of taxation. I do not know whether this is true or not, but it seems to me that this is one of the most important questions before this convention. I do not know how the paternalism of the government will work out in general, but I do know how it works out with roads in Ohio. It seems to me that the great interests represented here should consider seriously the thing that follows paternalism, and that thing is debt. In a general way, as to roads in Ohio, the national government gives Ohio so much money; this is met with an equal amount levied on the grand duplicate of the state; then this money is combined and dangled before the local authorities; they must issue bonds to meet it to build their roads. As a result, many counties are in debt up to the limit, with spurs of roads leading nowhere and ending in mud-holes. It seems to me that this thing of public debt is one of the great issues before this convention and should receive more consideration than the particular tax levies on particular interests. It is a nightmare to Ohio, and kicking and protesting will get nowhere. Vic Donahey, former Auditor of Ohio, tells this story. He said that he went into one of the hill counties of Ohio and met an old man going along the road leading three hounds. Mr. Donahey asked him if he was going hunting and if he had his dogs named. The old man answered "yes" to both questions. Upon being asked the names, the old man replied: "I call this first dog

'old politician', because he runs everything in sight. I call the second dog 'old official', because he chases every scent; and I call the last dog 'old taxpayer', because he don't do a darn thing but set around and howl." The time for kicking and protesting is past, and constructive action on the part of the taxpayers of the nation is necessary.

CHAIRMAN BLISS: We shall have to proceed with the regular session in continuation of the subject of federal taxes, and I will ask Mr. Roberson, Attorney General of Mississippi, to preside at this meeting, and I will caution him as well as the rest of you that the time is very short, and ask you all to respond promptly and adhere as closely as possible to the time-limit.

FRANK ROBERSON of Mississippi, presiding:

CHAIRMAN ROBERSON: We now take up the subject of federal taxes, and first, the repeal of tax exemption. I do not know why Governor Bliss asked me to preside on this feature of the federal taxes, because in the State of Mississippi the only thing that I know about federal taxes is that state officials do not have to pay any of these federal taxes. The first speaker we have on the program today is Louis T. McFadden, Member of Congress from Pennsylvania, who, I am very sorry to say, is not able to be with us, but I think we have a communication which Mr. Holcomb desires to call to the attention of the conference.

SECRETARY HOLCOMB: Representative McFadden, who you know is chairman of the banking committee in the House of Representatives, is very much interested in the meeting and had every intention of attending. He telegraphs:

"Regret to advise you that circumstances beyond my control make it necessary for me to cancel my engagement to speak at the annual meeting of your association on Thursday, the 15th inst. Am confident that the present session of Congress will act to remedy the present evil of tax exemption. Favorable action by the Association at the present meeting on House Joint Resolution 102 will be very helpful. I am greatly disappointed not to be with you."

You may be familiar with this Joint Resolution, which proposes to add a new article to the Constitution, and as it is very short I thought it possibly ought to be inserted. It is as follows:

"HOUSE JOINT RESOLUTION 102,

*Proposing an amendment to the Constitution of the  
United States.*

*"Resolved by the Senate and House of Representatives of the  
United States of America in Congress assembled (two-thirds of  
each House concurring therein), That the following article be*

submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

“ARTICLE XX.

“The Congress shall have power to lay and collect taxes on gains, profits, and incomes, from whatever source derived, which shall include gains, profits, and incomes derived from securities created by the States and their subsidiary governments, issued after the ratification of this article, and salaries of all public officials, Federal as well as State, elected or appointed to office after the ratification of this article, without apportionment among the States and without regard to any census or enumeration: *Provided*, That any State having in force a general income tax under which the gains, profits, and incomes derived from securities created by it or its subsidiary governments issued after the ratification of the article and from salaries of public officials thereof are taxable and are actually taxed, shall, after the ratification of this article, have the power to lay and collect thereunder taxes on gains, profits, and incomes derived from securities created by the United States and its possessions and Territories, and salaries of all public officials of the United States and such possessions and Territories.’”

SECRETARY HOLCOMB (continuing): After breakfast this morning one of the best friends of the association—one of our very best friends—came to me and said he wanted to make a little correction in the record of yesterday. I flared up at him and said I could not very well promise any such thing; there was great pressure to close matters up and get away earlier. He did not seem to like it very much and left, but before he left me he called attention to the statement on the face of the program that I had prepared, cut from a newspaper address by Chief Justice Taft at Williamstown, at the recent conference there, and he intimated that I had gone back on the principle that facts are what we want here. Since mulling that over, I had a little remorse, and I should like to ask indulgence for three minutes for this gentleman to make a short correction.

CHAIRMAN ROBERSON: If it will be confined to three minutes, he may have the time.

H. J. BURTON of Minnesota: When my friend Mr. McKenzie was making his eloquent talk yesterday I recalled that we had had some previous correspondence in the matter, as he represents the farming industry, which is supposed to be opposed to the interests of other business men—the manufacturers and distributors as a class. I do not believe in preferred classes at all—I believe in strict business principles for all classes alike; but I agreed with all Mr. McKenzie said, especially his principles of taxation, except the fourth. And when he came to the facts I differed there on

only one thing. So I had a little talk with him this morning, after asking your permission to say something, and I found we do practically agree upon my statement of the fact of the department of justice's connection with the principles of the advocates of the sales tax. His address rather contradicted what we have been all the time asserting, that is, that the income and excess profits taxes, indeed all taxes, were passed on to the consumer and pyramided through each stage of the manufacturing process. And he repeated his remark this morning, that he had sent his investigator down to the department of justice and found they had no records of anything of the kind. So to make the matter clear in the annual proceedings of this conference I should like to present today the government record of a hearing on the administration of the Lever Act by the department of justice.

I read for record from the volume of revised hearings, May 9th to 27th, 1921, before the Senate Finance Committee, from the statement of Mr. C. B. Clark, representing several national distributors, as follows, p. 182:

"SENATOR McLEAN: It has been stated several times to the committee, and I presume you may have read the statement, that the excess profits tax had added something like 20 or more per cent to the retail price of goods to the consumer. Have you had your attention called to the reasons why?

"MR. CLARK: Yes, Senator, I have. I would say that I happened to be, in the fall of 1919, one of the committee of 17 called by the Department of Justice for the consideration of problems in the administration of the Lever Act, and in our talk with Mr. Howard Figg, who, as you know, was the special assistant to the Attorney General in direct charge of the administration of the act, he made the statement to us that there was in a sales dollar at that time a tax content of 23.2 cents. We have used that in our plan. We did not accept it without consideration.

"SENATOR McLEAN: Upon what did he base that conclusion?

"MR. CLARK: Mr. Figg told us, I am quite certain, that he obtained the figures from the Treasury Department. I would like to show that it is a reasonable figure.

"Mr. Figg's statement was based on the total tax; was not confined to the influence of excess profits or surtaxes. We satisfied ourselves in this way, if you can take the estimates of the Treasury that there were taken from business during the period to which Mr. Figg was referring from 30 to 40 per cent of profits, and that profits were about 15 per cent of sales, a simple calculation would show that the actual tax on all sales to consumers was a little less than 6 per cent. This is a tax on all processes from raw materials down to the consumer, which must be, I believe, pyramided to the same

degree as a sales tax will be pyramided by successive turnovers.

"I think it is generally accepted that the effect on the ultimate consumer of a 1 per cent tax on all the processes of a limited turnover is  $3\frac{1}{2}$  per cent, or three and a half times the rate of the tax. Therefore it would be proper, having arrived at a tax rate of 6 per cent on sales by the calculation to which I have referred to multiply that tax rate by  $3\frac{1}{2}$ , which would give 21 per cent, or 21 cents as a tax content. . . ."

Furthermore. In the printed report of the ninth annual convention of the national retail dry-goods association, held in this city in February, 1920, there appears an address by Mr. Howard E. Figg, Assistant Attorney General, who had charge of the enforcement of the Lever act. It is entitled "The Government Campaign Against High Prices", and the following extract is quoted therefrom:

"The manufacturer anticipates his excess profits taxes and adds them to his overhead costs. His regular or normal profit is based upon his gross overhead, and so it is true all down the line until the commodity reaches the consumer, with a normal profit of each step in the transaction added on and compounded on the excess profits tax, which has increased the cost to the consumer at approximately 25 per cent. That is a gross injustice to any consumer, and I hope that your body, this Association, may take action that will have the effect of correcting this evil."

The above is extracted from a letter sent to G. D. Goff, Assistant Attorney General, Department of Justice, Washington, D. C., May 28, 1921, by the chairman of the business men's national tax committee.

The logical conclusion is that every unwise, unequal, uncertain, annoying or excessive tax cost must be compounded in their selling prices by all manufacturers and distributors who expect to survive in competitive business.

MR. MCKENZIE: I rise to a point of personal privilege.

CHAIRMAN ROBERSON: I don't like to let this discussion get any further away from us, as we have our regular program, for the reason that I do not know where it would lead to.

MR. MCKENZIE: You have allowed the gentleman to raise the question of fact. It seems to me that in all fairness I am entitled to at least as long as he had, to answer this.

CHAIRMAN ROBERSON: I shall be very much pleased to give you that time just as soon as we get through with this regular feature of the program here; I should be pleased to give you that much

time or more. We now have the next address on the program, of Mr. H. S. Van Alstine, a member of the Ohio state Senate.

H. S. VAN ALSTINE of Iowa: I am sorry to say that I will have to make a slight correction, with the consent of the chairman. I do not have the honor of coming from Ohio, I come from Iowa, and I make that correction because I do not want to fly under false colors, remembering many great men have come from the State of Ohio, and how proud Ohio is of the fact.

CHAIRMAN ROBERSON: I think perhaps that is due to my Southern pronunciation of Ohio and Iowa.

MR. VAN ALSTINE: You have heard the reasons for Mr. McFadden not appearing on this program. I cannot tell you how much I regret that he could not come, nor how much I feel that you have missed in his inability to be with you to present this case. I expected to come down here and fill a very unimportant part in this program, merely taking part in a discussion following the address of Mr. McFadden. When it was announced that Mr. McFadden would not be here, I endeavored to confine the scope of my remarks to some extent and reduced them to manuscript.

Now, gentlemen, we have heard three addresses on this subject and I have been very much gratified at the general agreement of opinion expressed by those able men with this manuscript, and I think you can appreciate the personal satisfaction I got out of that fact when we remember the old adage of how the minds of great men run in the same channel. Now, I am not going to perpetrate this entire manuscript on you, not because I don't think it is good, but because you have heard many of the salient points that I have endeavored to cover.

## FEDERAL SUBSIDIES THROUGH TAX EXEMPTION

H. S. VAN ALSTINE

The questions incident to taxation were born with the conception of human association toward community relationships, and will continue a storm center of interest as long as governments endure. The right to tax is essentially inherent in the right to govern, and we can better appreciate how greatly we are indebted to orderly government if we consider how wretched mankind would be without it. It is probable that a history of taxation methods and experiments would show that this issue has given birth to more fallacious theories than any other branch of economics. The true principles underlying wholesome taxation were happily expressed by Montesquieu when he said: "Each citizen contributes to the revenue of the state a portion of his property in order that his tenure of the rest may be secure." The paramount

object of taxation is to secure revenue to support the state, and when properly applied, it contributes to the progress and welfare of the community, and conversely, improper taxation entails endless trouble and has caused many of the world's greatest catastrophes. The economic welfare of a community or a nation may be made or marred by its policies governing the levying and expending of public revenues. History is replete with evidences of the basic importance of an equitable system of taxation in promoting the welfare and prosperity of a nation. Should you ask an American schoolboy the cause of the American Revolution, he would probably reply, "Taxation without representation." The underlying causes leading up to the French Revolution were national extravagance, and consequent excessive taxation, aggravated by exemption of favored classes. The political and economic changes wrought by the late war have greatly complicated the taxation problems which now confront us. While we all recognize the necessity of taxes, yet we all have some measure of human reluctance to paying them. The tax-gatherer is yet to be born who is welcomed with a glad hand. There is a natural inclination for everyone to pass the tax burden on, so far as possible, to someone else.

The chief essential of every tax program should be equality of its application and its burdens to every person, according to his ability to contribute to the necessary requirements of the state from which he claims protection of person and property.

One of the outstanding features of our constitution was the evident intention of its framers to make the burdens of taxation universal and equitable, and to prohibit such discriminations as had brought trouble and distress to other nations. Democracy had its inception in that age-old struggle for equal rights, an equitable distribution of tax burdens, and the abolishing of exemptions and immunities to the rich and powerful. Favoritism in taxation has always been a prolific source of discontent and social upheavals. While the theory of equitable taxation has probably never before been more carefully considered, or better understood, the present practice in our federal and state jurisdictions is in many important respects, out of harmony with the ideals and principles upon which our institutions were founded. In times past, it has been customary for autocratic governments to exploit the lower classes for the benefit of the upper classes. The evolution of industry and the organization of labor, under modern democratic forms of government, has made it possible for the more numerous laboring classes to exploit capital and wealth, as effectively as did the feudal lords exploit their dependents. Economic fallacies die hard, and it is difficult for the people to learn that any attempt to exploit classes by discriminatory legislation, or methods of taxation, is fundamentally wrong, and will eventually react to injure the intended bene-

ficiaries. Exploitation of any class by a democracy is as intolerable as exploitation by an autocracy. The rule of a Lenin would be as objectionable and as subversive of human rights as that of a Louis XIV, and the lesson of both is that discrimination and class privilege, for the intended benefit of any class, will ultimately defeat its own purposes. Someone said, "History teaches that man learns nothing from History." While we are justified in believing that our form of government is the best for our people that human wisdom and experience has devised, we may well draw object lessons from the experience of other peoples and nations, and be guided by the lessons gleaned from the world's hard school of experience.

It has been said that "that country is best governed that is least governed", and this idea long dominated our statecraft. As our population increases, and becomes more congested in the great industrial centers, social life becomes more complex and the necessary functions of government are increasingly complicated and enlarged.

In determining how far the government may properly control or limit individual liberty, we should exercise the largest measure of sound common sense, and endeavor to profit by the historic experience of other peoples and nations. The present tendency toward government control of business activities, or some form of socialistic paternalism, is a very real danger to our future welfare. The free exercise of individual initiative and private enterprise has been our chief bulwark against either socialism or class distinctions, and when we abate the largest measure of personal liberty consistent with community welfare, we are departing from our traditional policies, and jeopardizing the future of our form of government. This spirit of independence and individualism is a heritage from our colonial forbears that is instilled into the mind of the American child and he is taught that his future holds latent possibilities, limited only by his ability, and his will to work. The growth of our civilization and material progress is based on the idea of property rights, and experience has clearly demonstrated that it is contrary to human nature for the individual to do efficient work without hope of pay, or the right to own property. Any agitation against these rights impairs confidence and retards industry. It has ever been the dream of socialistic visionaries to benevolently order individual conduct through a bureau, commission or department of state with rosy promise of utopian benefits to all humanity. Such theories are often advocated, not only by sincere and altruistic-minded persons, who are so far convinced of their wisdom that they would use force to carry out their benevolent plans for humanity, but also by those who hope to find an easy refuge from the strife for existence in the open marts of industry. Such experiments prostitute the basic principles of self-



government, and successive efforts have proven their futility. It is a principle of economic law that society tends to adopt such policies and rules governing human relationships as will yield the largest measure of economic advantage to the community and the state.

We readily accept the operation of natural law as inevitable, but are too often reluctant to recognize the broad principles of economic law as equally immutable. Its operation may be diverted for a time by wars, legislative fiat or other human devices, but eventually it will reassert itself with unspent force. The great war put the industrial world out of balance, nationally and internationally, and its economic effects afford such an example. That cataclysm deranged the orderly conduct of our public and private affairs, and necessarily enlarged the scope of our governmental activities. Transportation and communication lines were taken over, and numerous arbitrary rules, regulations, and limitations, affecting private business and individual conduct, were promulgated and enforced. The average American citizen places a high value upon his conception of personal independence and individual liberty, and the cordial manner in which our people accepted and conformed to these multifarious rules, regulations, and limitations was good evidence of their sincerity and belief in the justice and righteousness of the cause they had espoused. Now that the war is over, this enlargement of federal authority should be withdrawn, to the end that private initiative and enterprise may have free play and again give us untrammelled operation of economic laws governing our common interests. There is room for honest difference of opinion as to just how far a government may properly direct or operate industries. Every right-minded individual desires the best environment obtainable for himself and his posterity. Modern society is necessarily cooperative. Every individual is largely dependent upon his fellowmen for the necessities and conveniences that minister to his welfare, and every useful citizen contributes his share to the common good. Experience has demonstrated that officialdom, when safely entrenched, is proverbially inefficient, unprogressive, wasteful, and in the operation of industries cannot successfully compete with the private initiative and enterprise on an even plane.

In deciding upon the wisdom or expediency of extending government control to any activity or industry, the issue should be wholly and solely one of service to society. Under a free operation of economic law, the ownership and operation of any branch of industry will pass to those whose ability and efficiency gives the largest returns, and this eventually benefits the whole community. It is plain that there must be free competition to give society the largest benefit of such service. Those who favor socialistic or paternalistic ventures in business or industry almost invariably

endeavor to entrench themselves behind a subsidy, monopoly, or some margin of vantage, in order to safely compete with private enterprise.

This was the evident motive of those who advocated injecting the tax-exemption clause in the federal farm loan law, and is an admission of their own consciousness that even with free capital stock, free advertising, and the prestige of the government behind them, they could not meet competition in the open. Exemption from taxation has long been a favorite method of granting a subsidy or advantage to some favored person or class. Under our constitution, public issues of securities have been held to be tax-exempt unless made taxable by the issuing authority; but the exemption of federal farm loan bonds was the first material exemption subsidy to a private industry. It is plain that its sponsors intended to create a potential monopoly in the farm loan field, and this intention was voiced by Judge Lobdell, of the federal farm loan board of Washington, D. C., who, in his address before the Farm Mortgage Bankers Association of America, at their Minneapolis meeting of September 11, 1917, advised them to all come into the federal fold, and in his closing remarks, as a forecast of what the future held for the farm mortgage banker, said: "Ten years from now, when some successor of mine shall meet with this organization and address the Farm Mortgage Bankers of America, he will be addressing an organization of joint stock land banks."

The federal agencies have persistently endeavored to convey the impression that the private mortgage bankers are trying to put them out of business. This is not true. The private bankers have endeavored to show the unfair and uneconomic provisions of the law, and have asked that the federal agencies shall compete on an equal basis, in a fair field, with no favors. If this is done, we may safely trust the American farmer to decide for himself which plan or which agency best serves his needs. It is merely a question of service, and mutual service at that, between the wants of the investor, and the needs of the borrower. The farmer wants money as cheap as he can get it, and the investor wants as large a rate as he can get on his money. The ideal plan would be to have the investor lend directly to the borrower, just as neighbors often do. As our society is constituted, this direct dealing is usually impractical, as the borrower cannot always have personal touch with an investor who can meet his needs, any more than the housewife can always go to the manufacturer to buy her household supplies. Therefore, the agent or middleman becomes useful, just to the extent of his service. It is plain that if the government agencies have a better plan, or can give better service to the borrower and to the investor, they should be able to exist without a subsidy. If they cannot give better service, it would be eminently unfair to both the borrower and the investor, and clearly against

public welfare to create a monopoly in their hands. If the dream of Judge Lobdell comes true, the farmer will have just one place to go for his farm loans and the investor will have just one place to buy his farm securities. This tax-exemption subsidy is unfair, uneconomic and un-American. The chief beneficiaries are those with large incomes, who, by the purchase of tax-exempt bonds, may legally avoid payment of local, state, and federal taxes. The exemption feature is an indefensible example of class legislation. It is an injustice to every taxpayer, who must contribute to replace every dollar of taxation abated under this exemption. The advocates of the law claim that the purpose of the exemption was to help the farmer. If that was the real purpose, *why did they not exempt all mortgages*, instead of limiting the subsidy to these pet agencies of their own creation? A review of the history of this measure indicates that the tax-exempt provision was inspired and supported from political motives, rather than sound economic or business considerations. The subsidy feature was contrary to the advice and recommendations of its leading advocates, when originally presented to Congress. In his letter of October 11, 1921, relative to this proposal, President Taft stated: "The proposal which I make is not to subsidize the American farmer. Fortunately for this country he does not need it, nor would he accept it." This attitude is supported by the congressional discussion of the advocates of the measure.

The official report of the committee which was sent to Europe to study this plan, in referring to European conditions, has the following on page 12 of Document 967: "A very general practice is the distribution of subsidies, through state-endowed central banks, at rates that allow the peasants to obtain money below the ordinary market figures. It is not conceivable that American farmers would accept such assistance from the government and thus become a privileged class, supported in part by the rest of the people. The state aid program in Europe has made its way, against the opposition of the true exponents of cooperation, because it violates the cardinal principle of self-help upon which the idea is founded." Following this statement, in the same document is a somewhat lengthy quotation from Henry W. Wolff, whom they considered the best English authority on the subject. Mr. Wolff strongly disapproves state aid, beyond enacting appropriate laws which will permit real cooperation and the encouragement of sound economic instruction in schools and in special classes. He declares that state aid to cooperative societies is "grievous mischief", and in the long run brings disaster to the real success of cooperative effort. On page 13 of this bulletin, the committee states: "The state intervention that has marred so many European systems, was the outcome of conditions that have never been paralleled in the United States." Again, on page 28, in their con-

cluding remarks they say: "The object of this report is to present the plans which were developed by the farmers themselves, and which rest upon unassisted and independent endeavor for the accomplishment of their purpose." Again, on page 2 of Document 891, we find the following: "The objections to the management or control by the state of agricultural credit banks are in the main those which apply to all state enterprises of a commercial character. Institutions managed by the state are liable, owing to the absence of competition and the lack of incentive on the part of their employees, to be conducted without that regard for efficiency and economy which is essential to the success of private industrial undertakings." "Credit can be as usefully employed by the agriculturist as by the industrialist, but only if it be obtained in the way of business at its market value."

It is plain that the men who then made a study of this proposal were governed in their recommendations by sound economic principles and that Congress deviated from these recommendations when it incorporated the tax-exemption feature.

The only conclusion that we can draw is that the real purpose of this bill was to create a subsidized government monopoly in the hands of political appointees. The fact that tax exemption of such securities is not sustained by practice abroad is interesting and instructive.

It has been persistently represented by some of the advocates of this plan that the farm mortgage banker is a parasite on agriculture and that the Farm Mortgage Bankers Association of America has inspired the opposition to tax exemption of farm loan bonds, from purely selfish motives. No business or industry would welcome discriminatory legislation. However, their opposition has been fair and open and based on sound economic principles. The farm mortgage bankers have justified their existence in the past by rendering valuable service to their investing and borrowing customers and have contributed much toward establishing the farm mortgage as a premier investment. Now when their future usefulness is jeopardized by this law, they ask to have the issue of tax exemption considered on its merits, not only in its application to their business, but to all business and with a broad vision of the future welfare of the whole people. All the farm mortgage bankers ask is an open market and a "square deal", and let the best man win. Then if these federal agencies, or any other agency, can offer better service, or equal service for less cost, the private farm mortgage banker must bow to the economic laws which govern commercial intercourse. The law should be amended, granting exemptions to all, or to none, and every farm loan agency will then operate on its own merits. I do not intend to imply that I favor exempting all, for I do not. We cannot correct the inequalities and evils of tax exemption by more exemption. More-

over, I have emphasized this exemption to farm loan banks, for the reason that it stands as the first successful attempt by our government to permanently subsidize a strictly private industry, by tax exemption, and any extension of the principle may well be contemplated with profound concern. While tax exemption is granted to the War Finance Corporation, and also on dividends to federal reserve banks, it is not extended to their issues, and therefore is not as far-reaching in its effect on other industries. These exemptions, though indefensible in principle, are perhaps to be condoned on the theory that the federal reserve banks are, in fact, an "instrumentality of the government" and the War Finance Corporation was created as a temporary expedient, growing out of war necessities. The steadily increasing public indebtedness, local, state, and national, is a serious menace to the prosperity of our industries. The government creates no wealth. Increase of wealth comes only from productive industry, and the government merely takes its toll from the whole community. Exemption from taxation does not reduce the public budget, and every dollar of taxable income so exempted must be shifted to some one else. It affects every industry, every wage-earner and every consumer. Moreover, these farm loan banks have repeatedly appealed to Congress for help and secured huge appropriations from the national treasury, and the already over-burdened taxpayer pays the bill in increased tax levies. The United States treasury has been a convenient refuge for them in the past. Why not again, and again?

If this iniquitous example of paternal class legislation is to stand as a precedent, what of the future? A bill has been introduced in Congress creating a home loan bank, and exempting loans on town property from taxation. What next? Grants of privilege and exemptions are most prolific in reproducing their kind, and are always presented under the mantle of public welfare. Why not exempt railway bonds? Railroads are an essential. Why not exempt packing house bonds. Packing houses are essential. So are tanneries and shoe shops. Where would we stop. All are essential, and all are necessary factors in the orderly conduct of our industries, and all contribute to the general welfare of society.

The history of taxation marks a continual struggle on the part of the common people, for equitable and universal distribution of public burdens. Prior to the enactment of the federal farm loan law, exemptions were almost wholly confined to federal, state, and local securities and official salaries. The historic reasons for exemptions of state and local securities by the federal government were based on judicial construction of the fiction of separate state sovereignty and have no specific constitutional foundation. The adoption of the Sixteenth Amendment was a specific extension of taxing authority to the federal government, and the exercise of

that authority exaggerated the evils of tax exemption and the necessity for relief.

Many lawyers of high standing believe that municipalities are now taxable under the Sixteenth Amendment, and favor submission of a test case to the supreme court. The practical business argument for exemption of such securities has been chiefly based on the inexpediency of paying a higher rate on taxable securities and then collecting more taxes to pay the higher rate. If this were the whole cause and effect, the issue would be unimportant. Prior to the war nearly all of our federal taxes have been collected by indirect methods and were so inconsequential, as compared to our production resources, that the average citizen hardly realized that he was contributing to his government. The war left us a legacy of national expenditures which were appalling and the income tax law was devised as an effort to tax according to "ability to pay", and in order to bear most heavily on the rich, schedules were graduated to require an increasingly higher tax from those having large incomes. As now applied to higher incomes, these schedules have no parallel anywhere and are barely short of confiscation. In practice, it is disappointing, as these tax-exempt securities not only offer the wealthy an easy refuge from bearing their proportion of the tax burden contemplated by Congress, but defeat its purpose—which is to produce revenue.

Federal tax returns show that the number of wealthy taxpayers is steadily diminishing, and incomes of one hundred thousand dollars or over are now paying less than one-fourth of the net revenue that they did three years ago, and the process still continues. This does not mean that there are less great fortunes, nor that the wealthy are illegally evading taxes. It merely means that our present laws offer a legal and easy method of evading all taxes by acquiring these tax-exempt securities. As a result, those having large incomes are converting their holdings from industrial securities to tax-exempt securities and the burden of taxation is thus shifted to those who are unwary, or cannot convert their property into tax-exempt securities. The government is losing hundreds of millions in revenue every year, and we can only conjecture the loss to local jurisdictions, for these exempt securities contribute nothing to the community, state, or nation. Moreover, the situation breeds discontent on the part of the non-exempt taxpayers, who feel that our laws are fostering a privileged class. The chief indictment of our present federal tax system is that it debauches the fundamental principles of equitable distribution of tax burdens, operates to deprive legitimate industry of necessary credit, and increases interest rates and taxes to the verge of confiscation of production value. Every dollar of exemption must be paid somewhere and by someone, and in the final accounting our present system shifts the major burden to productive industry.

Taxation should produce necessary revenue, with the least possible interference with the general prosperity of the community. The harmful interference of our present system with the normal processes of economic life is evident, and must be remedied if we would place our industries on a sound basis.

Abraham Lincoln said of slavery, that our nation could not endure half slave and half free. No more can we hope to have a sound financial and economic structure with our securities half taxable and half free. Our industries cannot prosper half subsidized and half carrying a double burden of taxes. The magnitude of this evil is sufficiently serious today, but if continued, the possibilities of the future are appalling. There is no reasonable limit to the flood of state, city, and other public issues of tax-exempt securities. The system encourages all manner of public ventures and improvements, utilities, and the various business activities which the ingenuity of socialistic-minded theorists may suggest. The possibilities are limitless and transcend the imagination. Moreover, the very operation of this system strangles the flow of credit to private industry and enterprise, and turns the current of our economic life toward socialism.

The public interest in this issue is evidenced by press reports, and the general recognition of the evils of tax exemption by our leaders in business and public life. A list of those who recognize its baneful effects upon our industries would include the president of our country, the present and two preceding secretaries of the treasury, chambers of commerce, American Bankers Association, civic societies, farm bureau federations, Investment Bankers Association, and practically every economist in this or any other land. Heretofore, the theory of tax exemption, as applied to farm loan bonds, has had the support of the farmer, who expected a direct benefit, and this support has been nurtured and cultivated by government publicity and political propaganda. However, they now realize that the tax-exempt privilege has benefited only a small percentage of the farmers, being chiefly those located in remote or untried districts where the stability of the farm mortgage securities has not been fully established. It is a principle of economics that the rate of interest should be governed by the safety of the security and the certainty of repayment from production. Any diversion from this rule will react somewhere and upon someone. The great majority of our farmers live in localities or states where values and production are established, and it may be clearly demonstrated by statistics that these have been paying no greater, and in some localities a less, average rate of interest on their farm loans than is required by the federal farm loan agencies. When the federal farm loan banks commenced business they made a rate of 5%, and when they found that they could not market their securities, increased the rate to 5½%, and again to 6%, which is their

present rate. Therefore, it would be fair to estimate the average rate to the farmer as five and one-half per cent, without taking into account the net increase in rate caused by withholding five per cent of the principal for stock in the local bank, or the double liability he assumes as such stockholder, and the joint stock bank rate is six per cent. I have not been able to secure exact data showing the amount loaned on Iowa lands by these two classes of federal banks, but it is plain that the average rate must fall between five and one-half per cent and six per cent. The 1920 census shows that the average rate on all farm loans in Iowa is five and one-half per cent, and since the average rate on loans placed through government agencies is higher than the general average for the whole state, it is plain that the average rate on private loans must be somewhat lower than the general average rate of five and one-half per cent. Thus, the Iowa farmer has not been given a lower interest rate through the federal agencies, and the census figures show that the same general result would be reached in a large number of other states.

The steadily mounting taxes assessed against productive industries have reached a point jeopardizing their continued existence, and more and more of our farmers are recognizing the baneful effect of tax exemption. The farmer realizes that any abatement of tax upon one class of property must be added to other classes of property. The major portion of the property held by him is tangible and cannot escape being entered on the tax lists. He can see no prospect for reducing his tax burden other than by a more equitable distribution of that burden upon all classes of property, and greater economy in public expenditures.

An inequitable effect of this federal farm loan law, as applied to the whole agricultural industry, may be found in the fact that a comparatively small percentage of the money invested in agriculture is represented by borrowed capital, and if this borrowed capital may be secured at less than current market rate, through government favor, there is a clear discrimination against invested capital, and in favor of borrowed capital. It is estimated that the capital invested in agriculture is approximately seventy billion dollars. Of this amount, fifty-five to sixty billion represents paid-up capital, and ten to fifteen billion is borrowed capital. If, as claimed by its advocates, the federal farm loan law operates to reduce the rate of interest on farm loans below the average current rate paid by other industries, then competition would tend to reduce the net income of all farm property, proportionate to the net interest cost against that part of the farm property which was operated on borrowed capital.

For example: Let us assume that the average rate of interest for safe investment is six per cent; the farmer, owning a clear farm, would be entitled to expect his investment to net approxi-



mately the same rate. Now, without regard to rates that have been made, and merely as an example of what a paternal democratic government might do for so large a class of voters as the American farmers represent, let us assume that the government is furnishing money to the borrowing farmer at three per cent. This brings the owner of a clear farm, with an investment of six per cent capital, into direct competition with the farmer who is borrowing money from his government at three per cent.

The ill effect of this process on the farmer who owns his clear land is two-fold. In the first place, the competitive production value of his land is brought to a three per cent basis, and second, the uneconomic process of lending the borrower three per cent money, on a six per cent market, necessarily increases the taxes on all property, including the clear farm. It is true that the government has not furnished money at three per cent, but they have appropriated some hundreds of millions of dollars at less than the market rate, and the above difference in rate is exaggerated, merely as an example of the principle and its pernicious results.

Suppose the same plan was applied to manufacturing or merchandising. Imagine a manufacturer or merchant embarking in business, and investing his own good money, worth on the market six or seven per cent, when he knew that his competitor could borrow from a benevolent government at three or four or five per cent. The result is self-evident. Invested capital could not compete with borrowed capital and encumbered property would have a production return value in excess of unencumbered property. Let us not forget that this difference between the low rate to the government beneficiary and the market rate must be paid directly or indirectly by the public treasury, and would swell the burden or taxes carried by non-exempt property.

One of the most serious dangers of our modern experiments in taxation is found in the unanticipated interference with normal economic processes. Since its creation, the federal farm loan system has been a consistent pensioner on the federal treasury, and the direct and indirect cost to the taxpayers has entailed an additional community cost of from one and one-half to three per cent, thereby making a total community charge of from seven to nine per cent on this class of loans. The active business and industrial interests are now realizing the gravity of the situation and sentiment of both investors and borrowers is rapidly crystallizing in favor of abolition of all tax exemptions.

President J. R. Howard, of the American Farm Bureau Federation, says: "Tax-exempt bonds are rapidly increasing and unless soon checked will more than equal the values of all farm properties in the United States, including lands, buildings, live-stock, and machinery. These tax-exempt bonds are property, and being tax exempt, they throw additional burdens upon other classes of

property. When the amount of tax-exempt bonds equals the value of the farm lands of the nation, it means that every acre of farm land will be carrying approximately a double taxation." That would represent the attitude of the greatest farm organization. Otto H. Kahn of New York, speaking on the subject, before the Senate committee on reconstruction and production, said in part: "Our investment market has become crippled. The possessors of incomes of considerable size are more and more withdrawing from it and placing their money into tax-exempt securities to the extent that it is possible for them to do. I am not saying this from hearsay. I am stating facts within my own experience and knowledge." Mr. Kahn then presented an interesting table showing percentages a person living in New York must obtain from investing in taxable securities as compared to non-taxable. An income of \$20,000 would have to make 7.01 per cent in order to equal the non-taxable yield of 5.75 per cent, while an income of \$1,000,000 would have to make 23.96 per cent in order to equal the non-taxable 5.75 per cent. Conversely, a 7% taxable investment of \$1,000,000 would yield the investor less than 1¾% net revenue, and if taxed locally the local and state tax would be paid out of this 1¾%. Such tax schedules practically confiscate ordinary income rates, and we cannot reasonably criticize investors for taking advantage of any legal relief permitted by law. The only practical remedy is to abolish tax exemptions. Measures to this end are now pending in Congress, and the ill effects of the present system are so manifest that the current of public opinion will strongly support the movement and we may hope for relief either from judicial or legislative action.

In closing I wish to stress the great need for public economy at this time. That is the one direct and certain method of ameliorating the taxation problems now confronting us. We are striving to find the most equitable methods of levying taxes, but let us not forget that excessive taxes are injurious to society, no matter how levied. Even an equitably distributed tax may be so high that it will strangle the industry and dry up its very source, and thereby defeat its own purpose. The crying need is not for increased taxation or new sources of revenue, but for retrenchment and economy.

It appears to me that we are rapidly approaching the point where our annual tax budgets will exceed our annual increase in wealth, and the ultimate effect of that process needs no comment. No one wants to stop the march of progress, but we do want to know where the march is now leading us. It matters not how altruistic or public-spirited the purpose may be, public expenditure must bear a reasonable and proper relation to social income. Not a dollar should be collected in taxes above the real necessities of the state, administered with greatest economy. During the war-readjustment period, all lines of business have been obliged to pause

and retrench, except the business of government, which continues to spend, as though the public purse could be supplied by magic instead of from the earnings of the people. We have been appealing to Congress and our legislatures for help, and the legislative atmosphere is surcharged with plans for more credits and more borrowings. Permanent help will come from only one source and that is efficient industry, and private and public economy. It cannot come from legislative fiat or any political or socialistic system of economic alchemy. We have been intoxicated with our seeming prosperity and have indulged in an orgie of personal, state, and national extravagance. Our prosperity was largely imaginary, and was based on our borrowings instead of our savings. But the "dissipation was yesterday, the headache today". The experience is not pleasant but we shall survive and get back to some sane stable basis that we shall again call "normal". Our resources suffered less than any of the great nations engaged in the war, and are fundamentally sound. Experience has shown that when the issues are understood we may always depend upon the intelligence and sound common sense of the majority of our people in their ultimate decisions. Never before has there been greater need for a common understanding, a common purpose and a broad spirit of cooperation in meeting the industrial, national, and international problems of the day. The president has given us a good business and political motto—"More business in politics, and less politics in business." Let us adopt and practice this, as a sovereign panacea for our political and economic ills.

CHAIRMAN BLISS, presiding.

CHAIRMAN BLISS: The resolutions committee have a number of resolutions and it seems advisable to some at least that the proceedings be interrupted at this point and the resolutions taken up. That is not within the province of the chair, and must be done, if it is your desire, by action of the conference. I might say in this regard that a number of the members want to leave this afternoon, and in order to get a full hearing of resolutions it will be necessary to have them brought up at this time. What is the pleasure of the conference?

Motion made and seconded that conference proceed to consideration of resolutions.

Ayes and noes.

CHAIRMAN BLISS: The ayes appear to have it, the ayes have it, and it is so voted; the conference will proceed with a consideration of resolutions. The chair recognizes Mr. Tobin.

CHARLES J. TOBIN of New York: I should like to make a state-

ment before the resolutions are considered, to this effect, if the conference please, that there was one resolution read and handed in to the committee and several others in preparation having to do with the Revenue Act of 1921. The committee deemed it proper to drop all consideration of those resolutions because we thought it was not either fair to the expression of this conference or to those who had to do with the revenue act itself, so no report of any kind was brought in with respect to the Revenue Act of 1921.

The first resolution is to this effect:

*Resolved*, That this conference requests the National Tax Association to appoint a sub-committee on the subject of limitation of tax rates and annual expenditures of public funds and report at the next conference.

I move the adoption of the resolution.

Motion seconded.

CHAIRMAN BLISS: What is the pleasure of the conference? It is moved and seconded that the resolution be adopted.

(Ayes and noes.)

CHAIRMAN BLISS: The resolution is carried.

MR. TOBIN: *Resolved*, That this conference requests the National Tax Association to continue the sub-committee on migratory live-stock for report at the next conference.

THE CHAIRMAN: Adoption of the resolution is moved and seconded.

(Ayes and noes.)

THE CHAIRMAN: The ayes appear to have it, the ayes have it, the resolution is adopted.

MR. TOBIN: *Resolved*, That this conference recommends that pending:

First, a thorough investigation of the field of federal grants and subsidies to state and local governments, and,

Second, the settlement by the United States Government of a sound national policy fixing the character and purposes of governmental activities to be undertaken by the federal government and for which money properly may be appropriated out of the United States treasury, no new legislation, except affecting public land states, creating such "aids", grants, or subsidies to the states and their subdivisions be enacted.

I move the adoption of the resolution.

Motion seconded.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Resolved*, That this conference commends the *Bulletin* published by the National Tax Association and expresses its appreciation of the services rendered by Alfred E. Holcomb, secretary and editor.

MR. ANDREWS: I move the adoption of the resolution by acclamation.

Motion seconded.

(Rising vote.)

Resolution adopted.

MR. TOBIN: *Resolved*, That this conference requests the National Tax Association to continue the sub-committee on the "Apportionment of Taxes of Manufacturing and Mercantile Business" for report at the next conference.

Moved and seconded that resolution be adopted.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Resolved*, That this conference requests the National Tax Association to continue the sub-committee on "Apportionment of Taxes of Interstate Public Utilities" and that the scope of said committee be broadened so as to embrace the consideration of the entire subject of utility taxation, with the suggestion of approaching a model law for all the states in the taxation of such property.

Adoption moved and seconded.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Resolved*, That this conference requests the National Tax Association to appoint a sub-committee on the whole subject of forestry taxation for report at the next conference.

Adoption moved and seconded.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Be it resolved*: That in the opinion of this conference, Section 5219 of the United States Revised Statutes should be so amended as to permit the states to tax national banks according to such systems as they may consider desirable; provided, that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed or imposed upon state banks and trust companies.

Adoption moved and seconded.

MR. TOBIN: I might say here that Judge Howe had some suggestion to make as to this particular resolution.

SAMUEL T. HOWE of Kansas: I thought that it ought to be amended so as to include private banks.

CHAIRMAN BLISS: If there is no objection, the resolution will remain temporarily on the table, and we will get rid of those concerning which there is no debate, and take the others up after that.

MR. TOBIN: *Resolved*, That this conference reaffirms the position taken by the 13th Annual Conference on Taxation held in Salt Lake City, Utah, on September 10th, 1920, with reference to opposing the exemption from income taxation of the salaries of all public officials and of the interest on future issues of federal, state or municipal obligations, and hereby recommends the submission by the 67th Congress and the ratification by the states of an amendment to the Constitution of the United States which will permit the principle thus stated to be embodied in our national income tax law.

Adoption moved and seconded.

CHAIRMAN BLISS: Are there any remarks? If you care to discuss the resolution we will postpone it temporarily.

(Discussion deferred temporarily.)

MR. TOBIN: *Whereas*, at the first conference of the National Tax Association, held in 1907, it was resolved that it was the sense of that conference that inheritance taxes should be reserved wholly for the use of the several states, which resolution has been reaffirmed at subsequent conferences;

And *Whereas*, inheritance taxes have not heretofore been imposed by the federal government, except as emergency measures in times of war;

And *Whereas*, the federal estate tax now in force imposes an unduly heavy burden of expense upon the estates of deceased persons, in addition to the tax itself, out of proportion to the revenue received by the government, seriously interferes with the administration of such estates and delays final settlements;

*Be it Resolved*, That the estate tax should be recognized by Congress as a war measure only and should be repealed at the earliest possible moment.

Adoption of the resolution moved and seconded.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Resolved*, That the secretary of the National Tax Association be requested to take appropriate action to bring to the

attention of Congress the resolution passed by this conference favoring the repeal of the federal estate tax; that copies of that resolution be sent to the governors of the several states, and that the members of the conference and of the National Tax Association be requested to endeavor in all proper ways to further its object.

Adoption moved and seconded.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Whereas* this conference, although opposed to the levy of state inheritance taxes upon property passing at death under the laws of a state other than that in which the decedent was domiciled at time of death, recognizes the fact that such taxes are now imposed and are likely to continue in force for some time to come;

And *Whereas*, the administration of such laws as now framed is ordinarily difficult and complex and imposes undue expense upon the estates affected thereby, and frequently causes long delay in their administration;

*Resolved*, That it is the sense of this conference that it is highly important that the administration of such laws should be simplified.

The conference recommends to tax officials and the legislatures of the several states a careful consideration of the flat rate tax recently adopted in New Hampshire as presenting a practical and feasible plan whereby simplicity in administration can be brought about without loss of revenue;

*Resolved Further*, That a copy of the foregoing preamble and resolution, with a copy of the New Hampshire law or a description thereof, be sent to the Governors and inheritance tax officials of the several states.

Adoption moved and seconded.

(Ayes and noes.)

Resolution adopted.

MR. TOBIN: *Resolved*, That we extend our sincere thanks;

To Hon. Albert O. Brown, Governor of the State of New Hampshire, for his full cooperation and generous interest in making this conference a success:

To the members of the Committee on Arrangements and especially to Mr. Fletcher Hale, Secretary, and Lawrence F. Whittemore, Assistant, for helpful interest and constant effective service before and during the conference in taking care of the general needs of the individual members:

To the Bretton Woods Company and the management of the Hotel Mount Pleasant for very cordial efforts for the comfort and needs of the conference and for extending special facilities for the meetings:

To the Boston and Maine Railroad for its careful and efficient attention to transportation requirements and for its special service on the trip to Mt. Washington:

To the State of New Hampshire, Governor Brown, the New Hampshire Tax Commission, and the New Hampshire Assessors' Association for the entertainment of the conference and guests in the trip to the summit of Mt. Washington:

To the associated press for its interest and cooperation.

Adoption of the resolution moved and seconded.

(Ayes and noes.)

Resolution adopted.

CHAIRMAN BLISS: We will now take up the two resolutions which were laid aside for discussion.

*Be it Resolved:* That in the opinion of this conference, Section 5219 of the United States Revised Statutes should be so amended as to permit the states to tax national banks according to such systems as they may consider desirable; provided, that such taxation shall not be at a great rate nor impose a heavier burden than is assessed or imposed upon state banks and trust companies.

The adoption of the resolution is moved and seconded; remarks are in order.

MR. HOWE: I move to amend by inserting the words "and private" after the word "state".

CHAIRMAN BLISS: Amendment to the resolution is offered to insert the words "and private" after the word "state". The resolution will then read:

Provided that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed or imposed upon state and private banks and trust companies.

C. P. LINK: Motion seconded.

CHAIRMAN BLISS: The amendment is seconded; is there any discussion on the amendment.

HARRY T. SNEED of Louisiana: I think that amendment bad for this reason. It is largely a question of fact as to what a private bank is, and the effort here being made is not so much to equalize taxation among all money-lending institutions as it is to cure the effect of the Richmond bank decision. The states will have such power as the Congress may see fit to grant, and by making that



statute broad in including private banks is very unwise. The only reason I can see why that broadening should be done would be to more readily insure the passage of the amendment which the resolution suggests. It would be productive of much litigation if private bankers are placed on the same parity as national banks, because of the question of fact that arises as to whether a certain institution is a private bank or not.

MR. TOBIN: I should like to add a word: I believe the language is still incomplete as far as the New York situation is concerned, and the answer I make to the last gentleman is that if you do not include private banks and private bankers it is not going to be worth a five-cent piece as far as the New York situation is concerned, because the entire situation lies in the competition of the bank, no matter what kind of bank it may be, with a private banker. If you do not make it so as to comprehend these particular things here, you are not going to cure the situation in New York.

CHAIRMAN BLISS: The chair might suggest that it would be of some help in this discussion to remember that we are not exactly in the position of a legislative body. It is not necessary that these resolutions take on that superlative exactness that is necessary in drafting legislation. The main idea is what we are intending to carry with these resolutions. It would be almost an interminable process to formulate these resolutions so they may be transcribed in some federal or state statute, and I think the result desired will be accomplished if the main idea is covered in the resolution, without too much attention to more minute details.

MR. LINK: Mr. Chairman, it happens that at this precise moment Colorado is in the Supreme Court upon this very question. An organization in the shape of a private bank is trying to dodge state taxes. Now, it seems to me it is a detail which is not worth while putting in, because it may open up a dangerous field.

MR. W. A. HOUGH: There have been introduced in Congress already two bills, one in the House and one in the Senate. These bills provide that national banks shall be taxed on the same basis and at the same rate as other invested capital is taxed.

SECRETARY HOLCOMB: banking capital.

MR. HOUGH (continuing): Capital invested in the banking business. There would be no trouble to get the exact language used in the bill and insert it in this resolution, and that is what I think we ought to do. That would cover the field in all of the different states. It would cover all money which is invested in banking. I believe that is what ought to go into that resolution.

CHAIRMAN BLISS: Of course, the very obvious criticism of that kind of an amendment is that it would simply narrow down the resolution to one in favor of the act now pending. As the chair understands it, that is not the purpose of this resolution. It was to be broader in scope than that. I simply venture this interpretation on my own responsibility.

J. VAUGHAN GARY of Virginia: As I understand the present resolution pending now before Congress, the states will be limited to a tax upon the shares of stock of the banks. The purpose of this resolution is to recommend the amendment of Section 5219 so as to allow the states to adopt any system which they may desire, so long as they do not discriminate against national banks. In other words, if they consider it to fit into their system better to tax national banks upon their income, they may do so, provided they tax state banks in the same manner. Supplementing what Mr. Sneed from Louisiana has said, if you insert the words "private banks", it may not be very material, but if you insert the words "private bankers" there, that may be different.

MR. TOBIN: It should be "private banks and bankers".

MR. GARY: I beg to differ with Mr. Tobin in that matter, because if you insert the words "private bankers", you enlarge the field to such an extent as to make your resolution hopeless. I say that advisedly, because in the State of Virginia we require a private banker's license of anybody who loans, such as from a real estate man, and special mention was made of that in the record in the Merchants National Bank case. A person who loans money at interest is just the same as a private bank; he is not in the banking business; he accepts no deposits; he is different from national banks, but he is required to take out a license, and you will find you are handicapped by that language. I believe the legislatures can be trusted in this matter, and for that reason the resolution as recommended by the committee should be adhered to, and I move the previous question.

MR. TOBIN: If you take the language that is now proposed, you will exclude the biggest banking houses in New York City; there won't be one of them included. They are not private banks or bankers under our law, and they have taken great pains to be excluded as private banks, and you won't have the class that now should come within the purview of this act.

HUGH SATTERLBE of New York: Mr. Chairman, it seems to me that this controversy, if it may be called such, perhaps may be compromised. Instead of using the expression "state banks and trust companies", the words "state banks" having more or less a technical significance, what I suppose the resolution is aiming at

is banks and trust companies in states which might be conceived to compete with national banks, why would not the expression "banks and trust companies existing under state laws" serve the same purpose and get rid of the technical complications of the words "state banks and private banks and bankers"? I agree with Mr. Tobin that under our New York law, for example, the words "private bank" or "private banker" have a very technical significance, which is contra-distinguished, under our banking act, from the word "individual" banker, and there are a number of technical differentiations in our banking law which might cause trouble if you used the expression "state banks and private banks", but if you said "banks and trust companies existing under state laws", it might cover the proposition. I move an amendment to the resolution to that effect.

Motion seconded.

MR. VAN ALSTINE: I am not clear as to the exact status of this question right now, but I should like to make a further amendment to that definition, worded something like this: "or other persons engaged in general banking business". It would appear to me that that would cover it.

CHAIRMAN BLISS: If you will allow me to interrupt a minute; you are getting too many amendments. I thought you were going to speak without submitting additional amendments. The amendment has been offered by Mr. Howe. The resolution now reads, as amended by Mr. Howe: "Imposed upon state and private banks and trust companies."

MR. SATTERLEE: Will my amendment be accepted?

MR. HOWE: Yes.

CHAIRMAN BLISS: You accept the amendment to change that so it reads: "Imposed upon banks and trust companies existing under state laws."

MR. TOBIN: I should like to discuss that amendment if I may be permitted, Mr. Chairman.

CHAIRMAN BLISS: The maker of the amendment has the floor at the present time.

MR. SATTERLEE: As I understand this, this is a question of the taxation of shares of stock, as the gentleman from Virginia said; in New York we have so-called private bankers; they are not private bankers but they actually do a banking business as partnerships, but they have no shares of stock.

CHAIRMAN BLISS: If you don't mind an interruption by the chair, it says here: That in the opinion of this conference, and so

on, the statute shall be amended so as to permit the states to tax national banks. If you mean by that the taxation of national bank shares, the resolution is incomplete, and should be made more definite on that point, it seems to the chair.

MR. SATTERLEE: I was wrong in speaking of shares, but I think there are so many different kinds and shapes of people engaged in the banking business, that if you try to limit it by any technical expression, as I said, you get into a whole heap of trouble, and the best you can do is to cover the field by a more or less ambiguous and yet general expression, such as the one I suggested.

MR. TOBIN: That is just the effort that has been made from time immemorial in New York. There is one group of moneyed men that have kept themselves entirely away from any taxation, while still competing with every state and national bank in New York, and if you are to pass the resolution now suggested, it won't be worth a nickel as far as the state of New York is concerned.

DELEGATE: Why not?

MR. TOBIN: Because this money is in actual competition, and it would not be fair to say that national banks should be placed on one basis of taxation and leave these people entirely free and not to pay a cent.

DELEGATE: Why wouldn't this thing be handled better to say, we recommend that the statute be amended substantially as follows—there are two bills pending in Congress, probably identical, but they are not the same as anything proposed here: We commit ourselves to the proposition now pending in Congress. I think that will solve the problem, because we have a complicated question, and I would suggest that for consideration.

MR. VAN ALSTINE: If it is in order now, I should like to move to further amend that motion by adding the words "or other persons engaged in the general banking business". Evidently the courts must decide who is a banker and who is not; it has been indicated that such issues are now up in the courts, and it seems to me that this would cover the situation raised by the gentleman from New York.

GEORGE LORD of Michigan: We are all agreed on the main purpose of this resolution, and I don't think we ought to waste too much time, so I make the suggestion that we amend it so as to have it read substantially: "The national government will permit the taxation of bank shares, subject to such provisions against discrimination as the Congress might devise," but this resolution as amended by Mr. Satterlee covers the case very well.

CHAIRMAN BLISS: This resolution does not refer to taxation of bank shares, but refers to the taxation of national banks, not the shares of national banks.

MR. LORD: Isn't it the intention to permit the taxation of bank shares?

SECRETARY HOLCOMB: Either way.

MR. LORD: Why not amend it to say either banks or bank shares; let us make it broad and leave it to Congress.

MR. MCKENZIE: I think if you will use the term "other competing agents" instead of specifying, you will cover the point.

MR. SATTERLEE: I think if you use that expression, "competing agencies", you will get into a lot of trouble as to what is a competitive agency.

SAMUEL LORD of Minnesota: If you do what the gentleman suggests over here, you will bring the matter right back under the Virginia case. You will get nowhere.

MR. GARY: I think it was demonstrated last night that they had been forty years determining what moneyed capital in the hands of individuals really meant. If we are going to adopt any phrase of that kind, it means that we are going into another forty years of litigation, and it strikes me that Mr. Satterlee's amendment covers this point. He says, "Imposed upon banks and trust companies, existing under state law," and I think that is explicit. Every one knows what that means, and that would completely cover the situation.

(Call for question.)

CHAIRMAN BLISS: Was there a second to the amendment offered by Mr. Van Alstine.

MR. TOBIN: I second Mr. Van Alstine's motion.

CHAIRMAN BLISS: To insert the words "person or other persons engaged in the general banking business," so that the amendment as amended will read: "Nor impose a heavier burden than is assessed or imposed upon banks or trust companies existing under state laws, or other person or persons engaged in a general banking business."

MR. GEORGE BRYAN of Virginia: Is that good English? Banks and trust companies are not persons. While I am on my feet, permit me to say this, I think the chairman laid his finger on the whole question a few moments ago when he said we are not here as a state legislature or Congress, to enact the last word in legislation upon this subject; that is to say, we are here to advocate a policy and not a project, and it seems to me we can safely leave

it to the expert framers of legislation to carry out the idea. I think therefore, with great respect to all these movers of the amendments, that we can safely depend on Congress to follow the general views of this association, and I therefore move the previous question.

MR. HOUGH: Unless the words "shares of bank stock" have been placed in that resolution, it will get no consideration and no support in Congress at all. There is not going to be any sentiment there in favor of taxing national banks, you can be dead sure of that and there won't be one vote in favor of it. What you want to do is to conform this as nearly as possible to the idea which has already received, both in the Senate and in the House, very substantial backing, and while it is true we are not giving the last word in legislation here, we ought to place this in some sort of form that it will support the movement which has already been undertaken, and which has the support of the Finance Committee of the Senate. I do not see any objection and I cannot see any reason for not using the very words that are in the bill, and that is that the shares of national banks shall be assessed for taxation upon the same basis and taxed at the same rate as other capital invested in the banking business. That is simple; that covers the ground, and it conforms to the two bills which are now in Congress.

CHAIRMAN BLISS: The question before the conference is the amendment to the amendment which reads, "and individuals engaged in the general banking business". Do you accept that?

MR. SATTERLEE: No, I do not accept that.

(Ayes and noes.)

CHAIRMAN BLISS: The amendment is not adopted. The motion is now on the original amendment.

MR. TOBIN: I would move as an amendment to Mr. Satterlee's motion, as an entire substitute, the language as proposed by the gentleman from Indiana.

MR. SATTERLEE: You were voting then on the amendment to my amendment?

CHAIRMAN BLISS: Yes, that is another amendment made to that, which seems to the Chair to not be germane. You can insert that afterwards if you want to.

MR. TOBIN: You are now voting upon the entire language and I move a substitute for that entire language.

CHAIRMAN BLISS: No, we are merely voting upon the amendment which, after striking out "state", adds the words, "existing under state laws", so that the tentative amendment is this: "Nor

impose a heavier burden than is assessed or imposed upon banks or trust companies existing under state laws." After you get that amendment passed you may go back, if I am not mistaken, and insert the word "shares" if you want to.

MR. TOBIN: My point was that the language as there used does not include or would not include a vast amount of banking capital in the hands of individuals and partnerships, which is in competition with national and state banks, and it is entirely unfair to pass the resolution in this form because it will in no way help the situation in New York.

CHAIRMAN BLISS: In reply to Mr. Tobin, the chair will state that an amendment providing for the point which he makes was voted down. It may be very regrettable, but it is the fact, and the motion pending now is upon the original amendment, which adds the words, "existing under state laws". That is the question before the conference, and I trust that you will confine yourself to a discussion of the question before the body.

(Call for question.)

DELEGATE: I just wanted to make this suggestion; that under all the circumstances it is up to this conference to make an intelligent recommendation, and one that can be understood when we make it, and under the circumstances it seems to me it would be the part of wisdom, if it could be agreed to, that we simply at this time take a recess and that the chair appoint a committee of men who understand the situation to re-draft the resolution entirely, so that when it is submitted we shall know ourselves what we are doing and Congress can likewise understand what our efforts are.

Motion seconded.

(Call for question.)

CHAIRMAN BLISS: Shall the amendment prevail?

(Ayes and noes.)

CHAIRMAN BLISS: The ayes appear to have it, the ayes have it and the amendment is adopted.

MR. TOBIN of New York: Now, I move you, Mr. Chairman, as a substitute for the resolution as offered, that the amendment be made in the language indicated by the gentleman from Indiana.

FRANK ROBERSON of Mississippi: I am not quite clear on this: When he said the situation is such that it does not catch the taxation of certain financial interests in the State of New York, it just keeps running through my mind that that is a question for the New York legislature, and that this resolution here is attempting to just simply fix it so that there will be no discrimination as

against national banks in favor of banks in the states, and when you once get that removed you have got to use the federal statute, and the situations you have in mind would be for the New York legislature.

MR. TOBIN: We want to tie up the taxation of banks with the taxation of other moneyed capital engaged in the banking business, because we think it is proper and just. We want to tax them all alike.

MR. ROBERSON: Then why don't you do it.

MR. TOBIN: We cannot do it.

MR. ROBERSON: That is the very thing I want to say, that the federal government tells you the only thing is you should not discriminate against national banks.

MR. TOBIN: You do not quite know the situation in New York, or you would know this, that that private capital has never been taxed and will not be taxed, unless you tie it up with your national bank situation.

SAMUEL LORD of Minnesota: I think the suggestion of the gentleman—I don't know his name—who has the cane in his hand—is good, and I would suggest that this resolution be re-referred to the committee, to be reported back immediately after the noon recess. I think then we shall get it in some shape that we can probably all agree on, but unless we are careful we are going up in the air here.

Motion seconded.

CHAIRMAN BLISS: Moved and seconded that the resolution be referred back to the committee; any remarks?

(Ayes and noes.)

CHAIRMAN BLISS: The chair is in doubt. Gentlemen in the affirmative will rise.

(Rising vote.)

CHAIRMAN BLISS: The motion is carried and the resolution is recommitted to the committee, with instructions to report immediately after the noon recess.

CHAIRMAN BLISS: This is the other resolution that was moved and seconded but laid on the table for discussion:

"*Resolved*, That this conference reaffirms the position taken by the 13th Annual Conference on Taxation held in Salt Lake City, Utah, on September 10th, 1920, with reference to opposing the exemption from income taxation of the salaries of all public officials and of the interest on future issues of federal, state or



municipal obligations, and hereby recommends the submission by the 67th Congress and the ratification by the states of an amendment to the Constitution of the United States which will permit the principle thus stated to be embodied in our national income tax law.

Shall the resolution pass?

CAPTAIN WILLIAM P. WHITE: The first issue of Liberty bonds was entirely tax-free. That issue of bonds remained at par until along after the war, and it was the only issue that did remain at par. Now, the object of the issuance of bonds, tax-exempt, is so that the state, community or United States may not come in competition with interest that is paid on other investments, in this way, that when you go into the investment market for the sale of bonds, unless there be some inducement to individuals to buy, those bonds are not readily sold, and the inducement that is offered is the fact that being tax-free they offer a convenient means to be used as collateral, because they always have a market. Now, on account of the failure of Congress to make all the bonds equally tax-free, some of the bonds are carrying a higher rate than others, and when you go now to borrow on your Liberty bonds, you don't get the full face value at the bank; you only get part of it, you get the market value; and corporations and individuals who during the war for patriotic purposes and for the purposes of winning the war borrowed money and bought bonds are now at a disadvantage on account of that stupid provision in the law. One of my friends here says the tax-exempt securities are in the hands of the large investors. I differ from him in that respect because they are only to a limited extent in the hands of the large investors. I am opposed to income taxes, anyhow.

FRANK ROBERSON, presiding.

MELVIN G. MORSE of Vermont: I feel strongly upon this subject; and I believe that it is radically wrong. I think I fully appreciate, or at least have some conception of the deplorable condition which this proposal is designed to remedy. However I am unalterably opposed to any further encroachment of the federal authority upon state sovereignty. I believe that the proposed remedy is worse than the disease it seeks to cure or at least to alleviate.

I do not believe that at the present time we are driven to the extremity of burning the barn to rid ourselves of the rats. The federal government, during the last few years, has been permitted steadily to encroach upon the sovereignty of the states, by constitutional amendment and otherwise.

The sixteenth amendment opened to the federal government the immense field of income and inheritance taxation, which hitherto

had been open only to the states. The eighteenth amendment is a direct encroachment upon the power of the states to regulate and control the police power within their own boundaries. Then the nineteenth amendment surrendered the control of the electorate.

For some years, by an ingenious system of subsidies, the states have been bribed into surrendering to a considerable extent the control of their public schools and the control of the construction and maintenance of their highways. In my opinion the tendency is all wrong and unless a sharp halt is called our states will soon become mere federal taxing districts administered by federal satraps.

The centralization of power may tend towards a certain species of efficiency, but in my opinion the Prussianization of our country is too dear a price to pay, even for increased efficiency; and personally I believe that real, true efficiency is sacrificed rather than increased by such a course.

The exponents of this proposition tell us that public and municipal bonds should be placed upon exactly the same basis as to taxation as the bonds of private corporations and doubtless our present system of exemption does give a municipal enterprise some advantage when in competition with private capital. This occurs occasionally when some municipality seeks to own and control its own water or lighting system. It is an attempt on the part of some municipality to furnish its citizens an adequate supply of water or light, at the minimum cost and without profit—certainly a laudable undertaking, which should be encouraged rather than discouraged. But the great bulk of municipal issues is for the construction of highways, school-houses and other public buildings, including prisons, asylums and homes for dependent and delinquent classes.

The advisability of a bond issue of fifteen millions of dollars is being discussed in our state for the construction of permanent highways. Personally, I hope it may not be done. But if it is done and this proposal is adopted as a constitutional amendment, Congress, by the imposition of a tax upon the income of these bonds, will in reality impose a tax upon the public roads of Vermont. Every public activity financed by a bond issue will to all intents and purposes be subject to a federal tax. A public building is burned and it becomes necessary to finance the replacement by a bond issue—the income of the bonds is taxable. Such a system would discourage progress, commercialize public necessity and penalize public disaster.

I say that it is fundamentally wrong and that the states should not submit to this invasion of their rights. I say that in the carrying on of a public work, in the erection of school-houses, and other public buildings, in the construction of public works, that the states and the governmental agencies should be given the greatest

possible encouragement, that you should not place a tax upon public progress; neither do I believe that the federal government should be allowed to thus encroach upon the sovereignty of the state. And, remember, that this barrier once broken down, will never be reestablished. On the other hand, I do not believe, gentlemen of the conference, that the reciprocal measure that the states may tax federal bonds is wise. During the last seven or eight years it has been necessary for the United States to raise an immense amount of money. It was accomplished by the sale of bonds. We urged every possible agency to purchase these bonds, and we were able to say that "these are tax-exempt", and by means of that inducement we floated the bonds at a low rate of interest. But, suppose we had said to prospective purchasers, "Here are the bonds, the government will tax them in the future, any municipality in the state in which you live may tax the income from them." What effect do you suppose would have resulted from such a situation?

Do you really believe that we could have floated issue after issue of bonds or that we should have won the war, for our ability to win the war depended upon our ability to raise tremendous sums of money in a tremendously short period of time. Would not our effectiveness as a decisive factor been terribly crippled by any condition that detracted from our borrowing power?

I hope and pray that never again in all the future shall we be involved in such a catastrophe as the great world war, but it may come, and we have no assurance that it will not. If such an awful situation should again arise, it should find the United States with its hands untied and in the best possible shape to render its service to humanity. And so, gentlemen of the conference, I am opposed to the proposition, because I believe it to be wrong in principle, unwise in method and that it would be unfortunate in result.

CHAIRMAN ROBERSON: We only have five or six minutes before the adjourning hour, and the discussion will have to be brief.

MR. HOUGH: I made the original objection to this, and I should like to be heard on it for a few minutes, gentlemen. You have had about two hours of discussion here this morning, and it has all been on the line that these non-taxable securities should be taxed. It is the general feeling of all of us that all of these securities ought to be taxed, but we fail to look through the question and see the other side of it. It does not do any good to stand up here and call our Congressmen imbeciles. They were men of common sense and they knew when the bonds were issued, and know now, that it is an underlying principle of this government, as deep as the Constitution itself, that the securities issued by the United States Government cannot be taxed by any state, and if we recom-

mend that that be done, if we recommend that national bonds be released for taxation, we shall make ourselves a laughing stock in the eyes of men that are familiar with the workings of this government. That is what we will do, because there is not a man in Congress who does not have enough sense to know that you could not sell a single government bond today if it were not issued free of taxes. What can you do when good railroad bonds that will produce ten per cent go begging in the market? What will you do when you see that our bonds have gone down as low as eighty-two cents on the dollar, even when they are tax-free. This government has its obligations to meet. We have the Victory Loan to be refunded in 1923; and I do not want to see this conference here placed in such a position before Congress as asking them to do a thing which is impracticable, which would make it impossible for this government to sell bonds, to refund that enormous loan, which must be taken up in two years. The only basis for the law that national bonds are non-taxable and that national securities are non-taxable rests upon the fact that there has been always a guard up to prevent the states from taxing out of existence the securities of the government, and that is a principle which should not be set aside. I recognize the inequality which results from the fact that many men with large incomes are investing their money in these bonds and escaping taxation, but the other side of the question makes it impossible to release at least government bonds for taxation. As to the other part of this resolution, you have combined two things here which are absolutely separate and distinct, in regard to the taxation of salaries. That is another thing. The idea of course back of that, and the law of the United States as it stands upon the statute books today, is that you cannot by a tax reduce the compensation of an office-holder during the continuance of his term in office. So far as I am concerned, I am in favor of every official paying a tax upon his income, just exactly as though it were derived from some private source, and this resolution ought to be separated, and that part put through, but the other part ought not to be passed, because as I say I believe it will place us in a position where we would be a laughing-stock in Congress, to ask to have something done which they know is utterly and absolutely impracticable for them to do. To illustrate the position of a great many of those who are in favor of taxing government bonds, I want to tell you what an old friend of mine said in regard to the income tax when it first came out. He was a man of very dignified presence and a profound bass voice which led him to say even "good morning" with such a sense of conviction that you would believe the sun was shining when the clouds were covering it up. The profundity which he had was entirely in his voice, and he had heard an illustration given of the inequality of the income tax. He did not carry it in his mind very well, but one morning in the

Judge's office where we were waiting before trying a case on change of venue from Indianapolis, he said in the midst of a half-dozen lawyers sitting there, "Gentlemen, this income tax is all a damn fraud"—don't put that in the record, please—and a gentleman from Indianapolis, a very profound lawyer, and who had a great sense of humor, turned around and said to my friend, whom I will call Mr. Johnson, because that was not his name, "Johnson, how is that?" Johnson said, "Now, gentlemen, you take a man that owns a farm worth one hundred thousand dollars and say he gets an income of six thousand dollars a year on it. Then you take a man that has got one hundred thousand dollars in bank stock and say he gets an income of ten thousand dollars. You take a man that has got one hundred thousand dollars invested in government bonds and who receives three and one-half per cent on them." "Yes," said Mr. Brown. And Mr. Johnson did not go any further, and Mr. Brown said then, "Well, Johnson, what then?" Johnson said, "Yes, that is it."

After you have talked over this exemption of bonds and come to the end of it, about all you can say is, "Yes, that is it." We cannot place ourselves in the position here of asking the government, when the bonds are selling now on the basis of five or five and one-half per cent, to go into the market and issue taxable securities which would compel this government to pay not less than eight per cent for their money. I am opposed to this part of the resolution which proposes to release for taxation government bonds, because it is an utterly impracticable thing to do, and it undermines the very valid principle of preventing the state from taxing out of existence the securities and bonds of the United States.

MR. MCKENZIE: Just a word along that line: In the first place, the last speaker seems to have overlooked one very serious element of the proposition, and that is, as the thing stands at the present time, the government is losing not less than six hundred millions of dollars through the income tax. It amounts to a lot more than that, they say, because they got their bonds issued without being subject to the tax. Those are the figures Professor Seligman gave to the Finance Committee of the Senate recently, and if anything, he is conservative; he is under rather than over. Another thing, the established fact is that the difference between a tax-free security and a taxable security is not the difference between five and one-half and eight per cent, but about one per cent. Another fact that seems to have been overlooked is the fact that many government bonds have been sold that are subject to taxation. The British government, for instance, has no such a volume of tax-free securities as we have, and yet they have financed their government and done it in a very able way, and it seems to me that the argument—

MR. HOUGH (interrupting): They do not levy a dollar's tax on their government bonds.

MR. MCKENZIE (continuing): They have no such volume of tax-free securities as we have in this country. We have government tax-free securities all down the line, so you are getting from sixteen to thirty-one billions of tax-free securities, and as a gentleman said a while ago, one-half of the people of the United States will be paying no tax and the other half will have their taxes doubled.

CHARLES J. BULLOCK of Massachusetts: The gentleman from Indiana did not think this problem through. He got as far as to say that if the United States Government had tried to put out during the war three and one-half per cent taxable bonds, it would have failed. Very true; but he did not take the next step and say that if the United States Government had had to put out a taxable bond, it would have had to put out a bond at the going market rate of interest. That is what it should have done, and our present difficulties are due to the fact that the federal government tried to beat the market and get less than the going rate, through holding out this premium in the shape of tax exemption.

The theory of tax exemption is that the government gets the benefit of the exemption in the shape of a better price for its bonds, or lower rate of interest. Now, with a proportional income tax, that is true. As I pointed out to you at Atlanta, with a progressive income tax it is untrue, because the difference in the rate of interest that the government secures, under a system of progressive taxation, is very much less than the advantage that the taxpayer of large means gets out of the exemption. If you have a proportional income tax, the thing may work out. When you have a progressive income tax, the government loses money by failing to issue taxable bonds at the market rate of interest. The United States Government since 1917 has lost millions of dollars a year in taxes over and above any possible gain that may come about through issuing tax-free securities.

Now, another line of argument advanced lately is that this provision permits one class of governments to tax the securities of the other out of existence. That would be true if the states were permitted to levy a discriminating tax. This resolution, I understand—I did not hear it read—provides for equal taxation. Now, the power to levy equal taxation is not the power to destroy. When Chief Justice Marshall said that the power of taxation involved the power to destroy he forged a thunderbolt and hurled it at a mosquito. If taxes are levied for revenue, that thing is absolutely false. Taxes levied for revenue cannot be levied for more than one year, or a few years, on a basis that destroys. Governments have got to let taxable ability and taxable business and the objects

of taxation live. It is the power to levy a discriminating tax that destroys, and it was that kind of tax Chief Justice Marshall had before him. In his decision, as Mr. Paton remarked last night, he went on to say that of course there was nothing that prevented the State of Maryland from taxing the bank without discrimination. What he really said was the power to levy a discriminating tax is the power to destroy. But there is no validity in the statement that if the states are given the power to tax federal securities on the same terms as their own, and the federal government is given the power to tax state securities on the same terms as its own, that power will be used in such a manner as to destroy.

SECRETARY HOLCOMB: I might say that while we should have due regard for our representatives at Washington, those of you who are here now and are members of the National Tax Association should also remind themselves that that Association has repeatedly spoken in no uncertain terms with respect to this question. I would just like to see us go back on the record that has been made, clearly and carefully, first through the model tax committee, which you will find at page fourteen of its report.

(Reading) "The personal obligation of the citizen to contribute to the support of the government in which he lives should not be affected by the form his investments take," and so forth.

Last year the exemptions committee condemned these exemptions and restated the fundamental principle that an income tax should be a "personal tax on every person in proportion to the income he enjoys from any source whatever".

Again, the federal taxation committee made a most explicit and careful condemnation of these exemptions, and it has come to be our accepted doctrine. I have understood that we favored the immediate stoppage of this fleeting income that is going into tax-exempt securities.

MR. HOUGH: Read the resolution, please.

CHAIRMAN ROBERSON: Are there those who desire to speak on this question that have not already spoken?

JAMES L. SAYLER of Illinois: The last few years it has been very apparent among those who have gone to banking institutions for money for one purpose or another, especially in the industrial and utility fields, that they have been hampered to considerable extent by this tax-exempt feature.

MR. HOUGH: They are not exempt in the hands of banks.

MR. SAYLER (continuing): Some time ago I made some figures for the Illinois public utility commission showing the comparative effect of the federal income tax on securities issued by industrial

and public utility enterprises, when such securities are in competition with the tax-exempt securities. This chart showed that the application of the higher surtax rates makes it impossible to secure capital from investors in the larger blocks in the public utility and industrial field, because in such financing these securities come in direct competition with the tax-exempt securities.

If there is anything at all in the taxation of property on the income basis, it seems to me that every dollar of income which an individual receives in the way of actual profits, from business, salary, investment in government, municipal or other issues should be included in gross income in arriving at the net income on which the tax is based. But in this connection there is another situation to which Professor Bullock referred, and that is that the present surtax rates are entirely too high. It is probable that when we get back to something like a normal basis, the surtax and normal rates under the federal law should not in any case in the total require more than twenty-five or thirty per cent of the income of any one taxpayer. Within reasonable limits, however, there is a basis for the increasing proportion. A short time ago, an editorial writer for the *Financial and Commercial Chronicle* said it was impossible for any person to give a good reason for the increasing proportion of the surtax rates as the same are applied in the present federal law. It is probable that no purely theoretical reason can be given for this; but the practical reason lies in the fact that an individual with an income of \$100,000 per annum can better afford to pay \$15,000 to the support of the government than an individual with a \$10,000 income can afford to pay \$500.

On the other hand, if it comes to the point that under the federal law there will be a limitation, say, of ten per cent on the amount levied on the income of any taxpayer, the revenues of the government will be seriously crippled. One of the men who stands out prominently as a distinguished citizen of the fourth century, and to whom that great master of national economy, William Gladstone constantly referred, said once that the reason that those in former times had enjoyed so great a prosperity was that they had paid taxes to Cæsar and had supported the great charities of the world. If the limitation of surtax and normal tax is to be around in any case not to exceed ten per cent or fifteen per cent, then the increasing activities of the government must certainly be stopped, or it will be necessary to institute a campaign of education for the support, from private contributions by those having great incomes, for the carrying on of much of the work of a charitable or quasi-charitable character that is now being taken over by the government.

On my way here from Chicago, I read an article in the current issue of the *Atlantic Monthly*, the underlying argument of the writer in such article being that the government could do so much



better in the management of many matters of business now undertaken by private individuals than if done by the individuals themselves, and that the scope of governmental activity should be increased rather than diminished. It is not certain, in the first place, that in many cases the government would do as well in the management of these activities as would be done by private individuals; and in the second place, any further undertaking of additional activity means increased taxation.

It seems to me that this association should go on record at this time as setting its face against the government undertaking, unless clearly made necessary, any additional activities; and that, furthermore, the policy which we have indorsed in the past as being unfavorable to the further issuance of tax-exempt securities, should be re-indorsed at this time.

(Call for question.)

CHAIRMAN ROBERSON: The main question is whether the resolution shall be adopted or not, and if there are no further remarks we will take a vote.

MR. HOUGH: Read the resolution.

CHAIRMAN ROBERSON (reading): *Resolved*, That this conference reaffirms the position taken by the 13th Annual Conference on Taxation held in Salt Lake City, Utah, on September 10th, 1920, with reference to opposing the exemption from income taxation of the salaries of all public officials and of the interest on future issues of federal, state or municipal obligations, and hereby recommends the submission by the 67th Congress and the ratification by the states of an amendment to the Constitution of the United States which will permit the principle thus stated to be embodied in our national income tax law.

(Ayes and noes.)

CHAIRMAN ROBERSON: It is the chair's impression that the resolution has been adopted.

MR. SATTERLEE: I have one suggestion to make which I hope may be of sufficient interest to keep us from lunch one minute longer. I want publicly to express my enthusiasm for the address on federal taxation which Professor Bullock made earlier this morning. It is the finest thing I have ever heard. It is the sort of address that anyone familiar with taxes, who is not employed to effect the relief of one class of taxpayers at the expense of the rest of the country, would make if he had Professor Bullock's profound knowledge and broad experience and high ability. It lays the dust, and to use another metaphor, it clears the air after

the storm. In the light of his statement that the income and excess profit taxes have been shifted in large measure, the friendly controversy between Mr. McKenzie and Mr. Burton, and their controversy on the same point, and still other matters of dispute, which have been talked about this morning, seem irrelevant and immaterial, if not incompetent.

It would be a public calamity if Professor Bullock's address could not be made available for wide circulation, and I therefore move that Professor Bullock be urged to give his consent to the publication of his address, and that with his consent and with such changes or modifications as in the interests of expediency he may think proper, the address may be made available for distribution as soon as possible, and certainly before the volume of the proceedings of the conference is printed; and in connection with that resolution I should like to say, that in view of the fact that it may entail some expense on the association, I should be glad to defray such expense, and others may wish to contribute to such expense.

(Motion seconded.)

CHARLES J. BULLOCK: That speech ought not to be printed as made. It ought to be very carefully prepared if it is to be printed, although nothing different in substance or spirit would be said. Moreover, this is a matter on which legislation is pending and I have tried to keep out of the discussion. I don't think the time has yet come when we can get the right kind of a revenue act, and I am saving my fire. I did not intend to say anything about it this morning, therefore I think I shall have to insist on my privilege of not having the remarks printed. At some time, in some way, I shall endeavor to present a review of revenue legislation.

MR. SATTERLEE: I should like to see the resolution adopted in the hope that in the near future Professor Bullock may change his mind.

CHAIRMAN ROBERSON: I think the wording of your resolution probably contemplated that anyway.

(Ayes and noes.)

CHAIRMAN ROBERSON: The resolution is adopted and Professor Bullock will arrive at an early conclusion as to publication.

I believe I promised Mr. McKenzie earlier in the morning that he might be heard for three minutes.

MR. MCKENZIE: What I wanted to say was this: The statement I made was, the treasury department had no figures and had made no investigation to substantiate the figures that 23.2 per cent of the

high cost of living was owing to the excess profits tax. This statement is true and has been made not only by myself but by Congressman Frear before the House Ways and Means Committee, and the same inquiry has been made by other congressmen. The fact is that Mr. Howard E. Figg, who was connected with the treasury department, made this statement on his own responsibility, and there is no dispute about that fact. What I object to is trying to make it appear that it was a deliberate judgment of the department of justice after an investigation.

[Adjournment of Session.]

## ELEVENTH SESSION

FRIDAY AFTERNOON, SEPTEMBER 16, 1921

CHAIRMAN BLISS: The meeting will come to order. We will now take up the resolution which was re-referred to the resolutions committee at the close of the morning session.

J. VAUGHAN GARY of Virginia: Upon the resolution which was re-referred to the resolutions committee, the committee wishes to report the following resolution:

*"Be it Resolved*, That in the opinion of this conference, Section 5219 of the United States Revised Statutes should be so amended as to permit the states to tax national banks or the shares thereof or the income therefrom, according to such systems as they may consider desirable, provided that such taxation shall not be at a greater rate nor impose a heavier burden than is assessed or imposed upon capital invested in general banking business and the income derived therefrom."

HARRY P. SNEED of Louisiana: I move the adoption of that resolution.

Motion seconded.

CHAIRMAN BLISS: The adoption of the resolution is moved and seconded; are you ready for the question?

(Ayes and noes.)

CHAIRMAN BLISS: The ayes appear to have it; the ayes have it; the resolution is adopted.

The regular program for Friday afternoon is in order. We have a gentleman who is familiar with taxation in general, particularly in Louisiana, and I take pleasure in presenting Mr. Sneed of Louisiana, who will preside at the afternoon session.

HARRY P. SNEED of Louisiana, presiding.

CHAIRMAN SNEED: I appreciate this honor, gentlemen, and to show the appreciation I shall omit any speech and proceed with the program as printed. The first is the report of the committee of the National Tax Association on inheritance taxes, of which William B. Belknap of Louisville is chairman—Mr. Belknap.

WILLIAM B. BELKNAP of Kentucky: There are two gentlemen in the conference this year who are used to hearing me speak on taxation and economic problems. Both have directed my studies of taxation. Both of them have left. I don't know whether that is giving you the cue or not. I refer to Professor Fairchild and Professor Bullock.

The main speech of the afternoon is to be made by Mr. Matthews of New Hampshire, who is the only member of our committee that has done any real original faithful work on the matter.

It would be very easy to wax eloquent on the terrible tangle into which death taxes in this country have gotten. We have the estate tax of the federal government; we have state estate taxes, state inheritance taxes, and what might be better called state transfer taxes, all piling up on each other. For all of these we might perhaps use the term "death taxes" rather than inheritance taxes.

A gentleman from Illinois reminded us yesterday that when we start out to reform taxes we have to keep in mind that the tax-gatherer must raise money, and that the only way we are going to accomplish any reform is to arrange to raise as much money as we now do but under a better form of taxation. To eliminate this duplication without cutting the yield sounds almost hopeless. Before we are satisfied we must reduce the transfer costs to the corporations, whose securities are tied up by the death transfers; we must reduce the cost of paying the tax to the taxpayer, and the cost of collecting it on the part of the states. All this reformation is a pretty big order, but by faith, perseverance and hard work we shall accomplish some real results.

Let us for a moment examine our worst troubles. First and foremost, we have the question of duplicate and triplicate and quadruplicate taxation. Death taxes come in the form of the federal estate tax, the estate tax in some states, the inheritance tax in the state of residence and the transfer taxes on non-residents, i. e. on the stock of corporations which are incorporated in the state and on the stock of corporations which are not incorporated in the state but have property in the state.

I drew up some examples of what might happen under the present laws. The first example is, perhaps, far-fetched. We will suppose a man lived in Oregon and took a flyer in oil stock. The oil company was organized in Illinois, and had some of this new Arkansas oil land, and instead of losing, as he normally ought to, we will suppose he made money. We will say he made a couple of million dollars he did not know what to do with. He had no family; so he left his entire fortune to an old prospector, a friend with whom he had lived in the mountains. What happened? The federal government took ten per cent, and more; Oregon took thirty-five per cent; Illinois took thirty per cent, and Arkansas

thirty-two per cent of the total. That made 107 per cent of the total that was taken in taxes. Or if we substitute for Illinois, West Virginia, it would have taken thirty-five per cent, and in all 110 per cent would have been taken on everything over the million. On the other hand, had the decedent died in Alabama, Virginia or South Carolina, and had the whole property been located there, he would have had only ten per cent federal tax to pay. In other words, the tax would vary from ten per cent to 112 per cent, which is unfair. If it had run over ten millions, which of course is very unlikely, the federal tax would have run the total up to 127 per cent.

The same thing might happen with a son—this is not quite so far-fetched. A man we will say made over a million dollars and left it to his son. The son on everything he received over a million—if it were divided between California, Arkansas and Illinois—would pay forty-four per cent. If it were in certain other states, he would pay only ten per cent from \$1,000,000 up to \$1,500,000.

Taking the case of a sister, you would get a little higher average. A man leaves property to a sister; on anything over five hundred thousand dollars she would pay fifty-two per cent, if Illinois, California and West Virginia were in on the tax, or six per cent if it had been in certain other states. The tax varies from six per cent to fifty-two per cent, which is what might well be called unfair taxation. Now, so much for the unfairness of the way the tax falls.

We also have costs where no taxes are paid—e. g., in New York it is necessary to get a waiver for the right to transfer stocks, even when nothing but the stock transfer is made in New York. Then we have such questions coming up as that of double domicile—e. g., the Frick case.

In addition to unfairness, you have the serious delay of settlement that comes under our present system. You have costs of settlement all out of proportion to the tax. I talked to a number of trust companies and tax attorneys—I mean estate attorneys—and I have gotten from a number of them the statement that upon most small estates the cost of finding out what the tax is and of securing the waivers exceeds the tax itself. If that is so; if you add 100 per cent to the tax for the cost of finding out what the tax is, something is wrong. It is true that costs will go down somewhat as the laws become stable and attorneys come to know the laws of the various states. The inheritance tax service now issued for the states and the federal government has undoubtedly reduced these costs considerably. But the cost is still there, and it hits the small person hardest of all. That is the thing you have to bear in mind about these death taxes; the expenses of paying death taxes fall heavily on small estates.

A lot of people, when you start to talk death taxes, say, "Oh

well, they hit the rich man, and nobody need worry about the rich man; he will take care of himself." That is not true. One of the attorneys here was telling me of a typical case he had of a small estate with a little stock in a Michigan corporation. It cost him \$13 in fees, not to mention his time, to find out that there was no tax on it, and that amounted to about thirty per cent of the value of the stock. It cost him thirty per cent to get the transfer made. It is the rule and not the exception that the transfer costs are proportionately higher on small estates.

Then, the cost of collecting the tax in some of the states is out of all proportion to the yield. I have written to all the states and asked for their costs of collection. Some of them have answered and some have not. In some of them the costs of collection amount to as much as fifteen per cent. On a transfer of small estates, in some states, then, we find a cost of 100 per cent to the taxpayer, and a cost of five per cent to the corporations and of fifteen per cent to the state; in all, a cost of 120 per cent of the tax, as well as the tax itself.

In a great many cases, in addition to the unfairness and delay and expense of this duplication, we have other problems. We have a number of states now that have very efficient administrative machinery. Governor Bliss, from what I can gather, has about as efficient machinery as could be very well devised. His problems in Rhode Island are not as difficult as some of the bigger states, however. I believe that in Illinois and California, the separate inheritance tax departments are efficient. Where one man knows the whole situation pretty thoroughly, as here in New Hampshire and several other states of moderate population, he finds it not very difficult to administer the law. But a number of the states have problems which they have not yet solved. As I say, the costs are far too high, and for the non-residents who want to get transfers made the delays and difficulties are very great. Then, we have other administrative questions. One state wrote in answer to a letter of mine that the tax was collected in the counties and the state didn't know how much had been collected. All the auditor could tell me was how much was handed in to the treasury. I have not been to that state to investigate, and I won't mention any names or I might get into trouble, but the man who wrote did not seem to think there was anything out of the way. Another great trouble is the lack of uniformity in the laws. Some states allow deductions of federal taxes and some do not. Some states provide for the payment of the tax out of the *corpus* of the estate, in the case of life interest and remainders; others do not. In some cases I have heard of, it has taken all the income accruing during the beneficiary's life to pay the tax on the life interest.

Some of the states allow exemptions for charities within the state, and some allow exemptions for charities no matter where

located—I believe we should only allow the deductions for charities within the state;—some states provide for exemption from a second death tax within five years. If a man dies and leaves property to his wife and she dies within five years and leaves it to children, a second tax should in fairness not be collected. Some states have this exemption and some do not.

Many of these taxes do what Professor Bullock mentioned this morning—they put a premium on all sorts of evasions, and dishonesty. The resident inheritance tax or the resident estate tax is usually not heavy enough or burdensome enough to cause any trouble; but when we add to it the federal tax and the non-resident taxes, we get the condition that one New York lawyer has aptly described. He says: "We are not paying a tax, we are paying a ransom."

The delays and the uncertainties of the tax have caused so much feeling that people are sore; they are bitter. If you will ask the trust companies and the lawyers just where the main difficulty lies, you will have the same answer in a majority of the cases. "The internal revenue department has held us up for one, two, three, or four years, and we cannot get any settlement out of them." Or they will come back and say, as I told you last year, "The internal revenue department said nothing for three years on this estate, and then they came back and raised the valuation."

I think Mr. Millner looks as though he could take care of the interests of the State of Illinois, and would not let a stock slip by him. After careful computation he put a valuation of \$55 a share on stock in an Illinois corporation and the internal revenue department, after three years, during which this corporation had been very prosperous, came along and put a valuation of \$77.95 a share on it. They would not listen to any objections. That was their valuation, and it made a difference of nearly \$100,000 in the tax—after three years' time of absolute silence.

I know of one case where a man has a large piece of suburban property he wants to sell. Another man who wants to buy it, wrote to his executors for the money to buy it. This would-be buyer was the son of a rich man who had died three or four years ago. The sum involved was \$100,000 or over. The executors told the heir, "We will send you the money when we get the matter straightened out with the internal revenue department, but we would advise you to base no business deals on any given time-limit in connection with it; it may be several years before we get this settled." Needless to say this deal has been indefinitely held up. This money ought to be out in active business, and it would have been had this estate been settled. The trouble arises, as I see it, from two causes; first, the delay of the federal estate tax; second, complexity and cost of payment and the variability of the non-resident intangible transfer taxes.



After a good deal of consideration the inheritance tax committee members, the two of us who are here, sitting with Mr. Millner, and Mr. Lucas, of California, and such other gentlemen as were kind enough to join us, suggested the resolutions which you passed this morning. The resolutions ask for the abolition of the federal estate tax and suggest to all the states that they investigate Mr. Matthews' plan for a flat rate tax on transfers of non-resident intangibles. If these two reforms are accepted the main death tax will be in the state of domicile. The fact that the federal tax is out of the way will allow the state of residence to levy a larger tax of its own. This increased state inheritance tax should satisfy the needs of the states, certainly, for the time being, and enable us to discourage any non-resident taxation. As to the states that insist on retaining non-resident taxation, let us try to get them to adopt the Matthews' plan. If we do, a man will no longer have to send eight, ten or fifteen copies of a will to eight, ten or fifteen different states, and eight or ten copies of the appointment of executor and of the inventory of the estate. We won't have offices in such condition as the New Jersey office was the last time I was there—papers piled head-high. They had to check nearly every important will and inventory in the United States in the New Jersey office, because of the workings of the law. When one holds any New Jersey stock, the tax officials have to take the entire estate and do all the figuring that they would have to do if it were a New Jersey estate. Mr. Matthews' plan would get away from all that foolishness. It would make it simple for the corporation to transfer the securities and would eliminate a good deal of costly work of the officers in connection with the non-resident tax.

I have gone over these evils hurriedly, because most of you know as much about them as I do, and there is no reason for my dwelling on them. The committee considered various other suggestions, which I think will have to go over to next year. We had hoped to have something of a model tax ready to suggest to such states as were changing their laws. It is not wise to urge most states to change their laws, except in connection with this non-resident tax, because, as pointed out, the decisions and the workings have all been built up on it; but I think something like seventeen states amended their laws quite radically last winter.

If they are going to keep on doing that, we might as well get some scheme worked out to point the way toward fairness and uniformity. There are certain suggestions which I think by next year we can get into line. For one, I hope we can rather delicately and tactfully suggest to such states as write us that they do not know how much tax was collected in the state—that the county treasurer had collected it and turned over what he saw fit—that it might be well to put an accounting system in and have some idea of where their tax comes from. They should know how much

was collected and how much it cost to collect. This would help procure intelligent legislation. Then, we ought to try to get what uniformity in the laws we can. The laws should agree as nearly as possible on such points as the source of the tax on life interests, and on the five-year period of exemption from second tax,—on the exemption of funds for paying tax on specific bequests,—on the figuring of tax on real estate owned by non-residents—some normal way of making the deductions for other taxes; on the definition of “domicile” and the “contemplation of death” clause. And perhaps the suggestion might come in that we should divide the tax on real estate as the English do, into three or four annual payments, if it is so desired by the beneficiary. It sometimes occurs in this country—it often occurs in England—that it is difficult to sell within the given period enough of the real estate in a big estate to pay the tax.

I have not covered all the difficulties I have heard of in the last year. I have had more different kinds of troubles told me than you would suppose could come out of one kind of law. But Mr. Holcomb here will tell you that he has more decisions on death taxes to write up in the *Bulletin* than any other one form of judicial decisions, showing that there is usually considerable discussion before the tax is paid.

One word about the statistics; that may be of a little interest to you—a few comparisons. I have tried to get some idea of the amount of tax collected in the United States under the death taxes. Apparently it is somewhere between one hundred and fifty and two hundred millions of dollars—I should imagine about one hundred and seventy-five million dollars was a pretty fair guess—in the year 1920. The English government collects from its death duties a tax of forty-two million pounds, or, if exchange were normal, that would be about the same amount, about two hundred million. They have, however, a very much more restricted area and about half the population. The whole of England is about the size of the State of Kentucky, and their annual income is usually put down at about twenty billions of dollars, or a little less, and our national income is guessed all the way from sixty to one hundred billions, so apparently we have, say, around three times the wealth of England, and we collect about the same in death taxes that they do.

Their taxes run up as high as forty per cent on the large estates, and that forty per cent applies all the way back down.

They assess their taxes promptly and we should do the same. I told them we were hoping to have it so we could get a receipt from the internal revenue department in a year to a year and a half, and they thought I was a little bit queer. I asked how long it took them; about two weeks after the inventory was completed was considered plenty of time to get the affair settled up. Of course,

they have had an advantage over us in that their tax office has been running a little longer than ours. I think they put death duties into effect about the time of the American Revolution. We can hope, when our death taxes have been running that long, that we also shall settle them in two weeks.

I particularly want to thank the men who have given me their time and advice at this meeting, and to commend to your serious consideration Mr. Matthews' paper, for that paper will make intelligible both my remarks and the resolutions that were passed this morning.

W. A. HOUGH: May I ask you a question in regard to expense, that you spoke of in settling the inheritance taxes? Where does that come from?

MR. BELKNAP: It comes from the time of lawyers and trust companies consumed in writing all over the country to get releases in order to get stocks transferred. It is a job that usually takes months of time, and lots of correspondence. Don't misunderstand me; those high costs do not apply to the large estates. As you get up into the half-million estates or even of one hundred thousand dollars and over, the percentage of the costs of paying the tax drops very materially. It is just as much trouble to transfer one share of stock as it is a thousand shares of stock, in any given corporation. I know of one Boston lawyer who told me he had one small estate where the man had bought only in ten-share lots and he bought in eight different corporations, each of them in a different state; it had taken him as long to settle that \$8,000 estate as it would have taken to settle a million-dollar estate, and the result was very costly to the estate.

MR. HOUGH: We do not have any expense of that character at all in regard to the inheritance tax in our state.

MR. BELKNAP: I know; in the first place you do not collect any non-resident tax, so you are not in touch with that situation, but in your town of Indianapolis I went over and talked to one of the trust companies, and some of these stories I told this morning were taken right out of that trust company office, but not from costs of paying the Indiana tax. It was the Oregon tax, the Wisconsin tax and the New Jersey tax, and taxes all over the country, and the federal tax.

CHAIRMAN SNEED: Instead of thanks being due to the conference by Mr. Belknap, the conference is undoubtedly under obligation to him for the immense amount of work he has gone to to accumulate the data, part of which he has given us, and the expense he has undertaken. His work as compared, I suppose, to that of any other individual, with the single exception of our secre-

tary, has been much greater than any other member of the association.

The next number on the program is the address of Joseph S. Matthews, assistant attorney general of New Hampshire, which state, it seems, is the guiding star, the beacon light, in this attempt to reform the muddle of inheritance tax laws among the various states. I take pleasure in introducing Mr. Joseph S. Matthews, assistant attorney general of New Hampshire.

JOSEPH S. MATTHEWS: Mr. Chairman, ladies and gentlemen: I have one advantage—perhaps I ought to say comfort—which none of the previous speakers have had, in presenting my paper at this time, in that there are no other speakers on the program who are anxiously waiting for me to get through. I shall have to read my paper because it is in part in the nature of a brief, in which I undertake to demonstrate that the flat rate plan as proposed is based on sound legal principles, and if I am right about that, I think it also demonstrates that Buttercup was right in the old song when she used to tell us that things are not always what they seem.

#### THE FLAT-RATE PLAN FOR THE TAXATION OF PERSONAL PROPERTY OF NON-RESIDENTS PASSING AT DEATH

JOSEPH S. MATTHEWS,  
Assistant Attorney General of New Hampshire

The taxation of transfers of personal property of non-residents, passing at death, at a flat rate, is suggested as a means of reducing the loss and expense which, aside from the tax itself, are imposed upon the taxpayer by the laws now in force in many of the states.

This association is committed to the proposition that "the correct principle underlying taxation of inheritance is expressed by saying that a given state should levy its inheritance tax only with reference to such property as devolves in accordance with its laws" (Rept. 1915, p. 378).

An effort was made some years ago to secure uniform legislation in the several states in accordance with this principle. The proposition was that inheritance taxes upon personal property should be levied by the state of domicile only and that the so-called inheritance taxes levied upon personal property of non-residents should be discontinued. This plan, which was already in operation in many jurisdictions, met with general favor among the New England states and was adopted by nearly all of them and also by New York. Tax officials in several of the larger states, however, were unwilling to recommend the plan because such a course did

not seem to them to be consistent with the interests of those states. This has prevented any very satisfactory progress in the direction of uniform legislation, and some of the states which discontinued the taxation of personal property of non-residents have again entered the field.

While I firmly believe that the principle approved by the association is correct and should eventually prevail, there appears to be little prospect of securing its adoption, in the immediate future, in several of our larger states.

In the meantime the tax upon transfers of personal property of non-residents is bound to be continued and the question is, how can that tax be levied with the least waste in the way of unnecessary labor and expense, both to the state and to the taxpayer.

At present there is no uniform rule by which this tax is levied or assessed. It is usually included as a part of the general inheritance tax law; its scope varies in the several states. It is usually assessed with reference to the relationship of the beneficiaries to the decedent. If the decedent dies intestate the property is sometimes dealt with as though it were passing under the laws of the state levying the tax, and the tax is assessed accordingly, after which the balance of the property is allowed to pass to the administrator in the state of domicile to be distributed in accordance with the laws of that state. In other states a different rule may be applied. Executors of large estates comprising personal property located in many states are compelled to ascertain and meet all the requirements in every such state, in order to obtain possession of the property and in each state the tax may be measured by a different rule and arrived at by a different method.

Executors are thus frequently required to furnish copies of the will and full details regarding the assets and liabilities of the estate to the state officials in several states. They may even be required to furnish all these details to several states in order to transfer a certificate of stock in a single corporation.

Cases are not infrequent where the returns required are too complicated for the executor and the services of an attorney are required. In some states, I am told, the tax officials do not deal directly with executors, but require them to employ an attorney to represent them. This means a large expense and frequently a long delay in securing possession of the assets. In some cases the aggregate tax assessed upon the estate by the foreign states amounts to a substantial burden, in many others the tax is not large and frequently it is negligible. There are many cases in which, after the executor has been put to the trouble of furnishing all the details, it is found that the property in the foreign state is within the exemptions and that there is no tax at all.

In a letter recently received from a leading probate lawyer in

Boston I find the following statement: "I have had," he says, "in my own experience, a number of cases where the tax has been very trivial, but where the loss, due to inability to sell and deliver the securities, has been a very serious matter, in some cases amounting to twenty, thirty or even forty per cent of the original value of the property." There is widespread complaint of this situation for two reasons, first, because it involves multiple taxation, and second, because of the expense and delay imposed upon the administration of estates. From long experience in the administration of such laws I should say that there is more objection to the interference with the administration of estates than to the payment of the tax. This results from the fact that the individual holdings, even of the large estates, in each of the foreign states are ordinarily small, so that the tax paid is often less than the expense of securing its adjustment.

The idea of the flat rate as a remedy for these evils was evolved from a consideration of the character of the inheritance tax as interpreted by the courts, and its relation to the laws regulating intestate succession. The courts say that it is a tax imposed upon the right or privilege of the heirs or legatees to take at death the property of a deceased person and not a tax upon the property itself; that the right which is taxed is one which emanates from the law of the state of domicile and is subject to tax by the state which grants the right and is not in fact taxed or subject to tax in other states; that the tax assessed by other states refers only to the transfer of the property within their several jurisdictions to the executor or administrator; and that the payment thereof merely reduces the net assets, like the payment of a debt of the testator, or the payment of money for funeral expenses or expenses of administration, and does not otherwise affect the interest of the heirs or legatees.

Speaking of the non-resident tax, the New Jersey Court says in *Carr v. Edwards*, 84 N. J. L. 667: "We had in *Neilson v. Russell*, 76 N. J. L. 655, just prior to the passage of the Act of 1909, held that a legacy under a non-resident's will was not taxable here because, among other reasons, it depended for its validity and amount upon the law of the testator's domicile. We said that the justification of special taxes of this character, imposed without regard to the limitation contained in our constitution upon property taxes, was found in the fact that the rights of testamentary disposition and of succession were creatures of law, upon the exercise and operation of which the law-maker might impose terms, and that it followed logically that the only law that could impose the terms was the law that created the right. The only special right given by the New Jersey law, in case of a non-resident decedent, is the right of an executor or administrator <sup>the property</sup>

having its situs in New Jersey. Unless, therefore, the legislature meant by the Act of 1909 to tax this right—the transfer, by grace of our law of the property having its situs here, from the decedent to his representative—its enactment was futile as far as the estates of non-residents are concerned.”

Now, assuming that the executor of a New Hampshire estate has paid a tax to New Jersey in order to secure the transfer of shares in a New Jersey corporation, let us consider how the New Hampshire court says he must account for it in the settlement of his account. The subject is covered by the opinion in *Kingsbury v. Bazeley*, 75 N. H. 13, which is, in part, as follows: “In the absence of statutory provisions on the subject, the question seems to be: What force, if any, can be given the foreign law in the distribution under New Hampshire law? This must be the sole question, unless there can be drawn from the terms of the will, expressly or by implication, evidence sufficient to justify a conclusion as to the testator’s intention. In a gift of a pecuniary legacy of a certain amount, the apparent intention is to benefit the legatee to the full amount named. \* \* \* To hold that the effect of the foreign law is to reduce the legacy given by the will, construed in accordance with the law of the testator’s domicile, is to permit the foreign law to regulate the testamentary capacity of a citizen of this state. But the foreign law cannot extend beyond the jurisdiction which created it. \* \* \*

“As the foreign tax depends upon the jurisdiction over the property, and is not sustainable as a regulation of the exercise of testamentary power by the citizen of another state, it follows that the tax is merely a charge upon the particular property, and not upon pecuniary legacies given by the will. That the foreign state may regulate the amount of the imposition made by it, or determine whether it will make any at all, by the character of the legacies given by the will, is immaterial. Having jurisdiction over the property, it is for such state alone to determine upon what basis it will exact payment. While in giving effect to a foreign will courts are governed by the law of the testator’s domicile, it has never been held that in the administration of an estate the courts of the testator’s domicile would be governed by the law of the situs of personal property. The estate within the control of the court is to be administered according to the law of the state. The property to be administered embraces all that was originally within the state, or that the executor has been able to find elsewhere and bring here. Whatever sums the executor may be obliged to pay to bring the property within the state merely reduce the amount within the control of the court. \* \* \*

“The executors have in hand, if they are ready to settle, so much property. The will, construed by the laws of this state.

directs how the distribution shall be made. The fact that the executors have less than they would have had, except for the demands of jurisdictions to which they were obliged to go to get the property and bring it here for distribution, cannot alter the law of the state or the terms of the will.

"In the absence of evidence from which a contrary direction can be implied from the will, the amounts deducted by other states, before permitting the transfer of property within their limits to the executor for distribution here (*Greves v. Shaw*, 173 Meads 205, 209) are not properly within this state for distribution. The executors are chargeable only for what has come to their hands—the property less the duties paid. If they charge themselves with the full value of the property, a practical method of accounting would permit them to discharge themselves by accounting for the foreign duties paid as expenses of administration."

As a concrete example of the operation of the law let us suppose that a citizen of New Hampshire dies leaving a will in which he gives \$10,000 to a nephew and the residue to a sister; that the value of his net estate is \$15,000, of which \$6,000 is found in New Hampshire and the remaining \$9,000 is located in New Jersey; that under the laws of both states legacies to nephews are taxable at 5 per cent and those to sisters are exempt. Because two-thirds of the total estate passes to a nephew, New Jersey assesses a tax upon two-thirds of the property found in that state, amounting to \$300, and the balance of the property in New Jersey, valued at \$8,700, is transferred to the New Hampshire executor, who then has a fund of \$14,700 for distribution. In that distribution the nephew is entitled to receive his legacy in full (less, of course, the New Hampshire tax) whereas the residue, which goes to the sister, will be reduced by the amount of the tax assessed in New Jersey. In other words, the sister, although exempt from taxation in both states, must bear the burden of the New Jersey tax. New Jersey has exacted a sum, which it calls a tax, upon the legacy to the nephew, but it does not operate as such, because the estate is distributed under the laws of the state of domicile, where the New Jersey laws have no force.

From this I draw the conclusion that this tax, although called an inheritance tax and ordinarily made a part of the inheritance tax law, is, in fact, nothing more or less than the price which the executor, appointed in the state of domicile, must pay for the privilege of taking possession of the property and not an inheritance tax at all.

Now why should a state impose upon itself and upon taxpayers the burden of all the trouble, delay and expense necessary to apportion such a tax according to the interests of the several beneficiaries when it cannot enforce payment in accordance with the



assessment because the property is to be distributed in another state, where its laws are not in force?

The flat rate plan offers a means of raising revenue from the same source by a simple and inexpensive method. The law, recently passed in New Hampshire (ch. 70, L. 1921), imposes a tax upon the transfer of personal property of a non-resident to the executor and is assessed upon the actual market value of the property transferred, without exemptions or deductions of any kind, and at a uniform rate. If such a plan were to be generally adopted the difficulties of administration now experienced would largely disappear. The tax in the foreign state could then be assessed by the simple process of applying the rate to the value of the property in that state. There would be no need to call upon the executor or administrator to furnish other details regarding estates and no occasion for delay. Furthermore, the adoption of this plan does not involve any loss of revenue to any state, it is simply a question of adopting a flat rate sufficiently large to produce the same revenue which the state is now receiving by the application of its inheritance tax rates.

The inequalities, as between the states, which result from the present laws, might also in some degree be prevented by the adoption of uniform rates in the several states.

J. VAUGHAN GARY of Virginia: I should like to make one or two remarks in regard to one phase of this question. Mr. Belknap has recommended, or the committee has recommended, the abolition of the federal inheritance tax. He has given some very excellent reasons for that recommendation. It seems to me, however, that grave as they are, namely; the delays of administration and the impracticability of the tax; there is a far better reason than that for abolishing the tax. It seems to me the most serious indictment against the federal inheritance tax is the fact that it is absolutely wrong in principle, for the simple fact that an inheritance tax must either be a property tax or a privilege tax. If it is a property tax, then it is a direct tax, which the federal government cannot levy. If, on the other hand, it is a privilege tax, as is recognized by the great majority or practically all of the courts of this country, then it is upon the privilege of either transmitting property at death or receiving property on death, both of which privileges are granted entirely by the states. They are privileges over which the federal government does not grant; nor does it control those privileges, therefore, for the federal government to undertake to tax a privilege which it does not grant, is imposing a tax which is wrong in theory and in principle, and therefore I think that the taxation of inheritances should be left entirely to the states, and I think the states would do well to back up the resolution which was introduced today and to urge with all their

power that the federal government withdraw from this field of taxation at the earliest possible moment.

Of course it is true that the tax was recognized as a war tax. The government imposed such a tax during the Revolution and also during the Civil War and during the Spanish-American War and during the World War. The first three taxes, however, were repealed shortly after the emergency passed, and I think the states should use their best endeavors to see that this statute which is now on the books should be repealed.

CHAIRMAN SNEED: The chair would suggest, if there is any disposition to debate this matter at length, that it be postponed until after the regular meeting of the tax association, which will require a few moments, and if there is no objection this discussion will be carried over until the meeting is held, for which the president will now resume the chair.

#### BUSINESS MEETING OF THE NATIONAL TAX ASSOCIATION

Z. W. BLISS, presiding.

PRESIDENT BLISS: We will now, with your permission, change from the Conference into the meeting of the Association. There are one or two committee reports—the nominating committee is one, so the report of the nominating committee is in order.

C. P. LINK of Colorado: Mr. Chairman and members of the National Tax Association: Our veteran and former president, Samuel T. Howe, of Kansas, was chairman of this committee, but he has hurried out to take the train which leaves very shortly, and I will read the report for him:

*To the National Tax Association:* Your committee appointed to present the names of persons to be voted for to fill the offices of the association until the next ensuing election respectfully present and recommend the election of the following named persons:

As President for the ensuing year, SAMUEL LORD of Minnesota.

As Vice-President for the ensuing year, Professor THOMAS S. ADAMS of Yale University.

As Secretary and Treasurer, ALFRED E. HOLCOMB.

As members of the executive committee to succeed members who retire, in accordance with our by-laws, the following named gentlemen, for the three-year period commencing with this session:

W. S. HALLANAN of West Virginia, to succeed A. J. Maxwell of North Carolina.

Honorable W. C. RAMSAY of Iowa, to succeed H. A. Millis of the University of Chicago.

CHARLES R. HOWE of Arizona, to succeed C. M. Zander of the same state.

Our selections were by the unanimous vote of the committee.

Signed: SAMUEL T. HOWE,  
CHARLES J. BULLOCK,  
FRANK ROBBERSON,  
FRANCIS N. WHITNEY,  
C. P. LINK.

CHAIRMAN BLISS: In order that we have a few moments to consider these nominations and in the meantime to distract your mind somewhat, we will hear the report of the Secretary-Treasurer.

(Brief report made by the secretary.)

SECRETARY HOLCOMB (continuing): I might add while I am here that Senator Vaughan has kindly gone over the registration cards and presented statistics showing the attendance at this conference of thirty-eight states and four Canadian provinces, which is very good. The attendance amounts in total to 256. This attendance comprises public administrators 110, or 43 per cent of the total; private interests and taxpayers 92, or 36 per cent; academicians 21, or 8 per cent; ladies 33, or 13 per cent; total 256. All states were represented except Nevada, Delaware, Florida, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington and Wyoming.

CHAIRMAN BLISS: You have heard the report. If there is no objection, the report will be received and ordered on file. Hearing no objection, it is so ordered.

You have heard the report of the nominating committee; are there any other nominations?

J. VAUGHAN GARY: I move the adoption of the report and that Mr. Link be instructed to cast the unanimous ballot of the association for the gentlemen named.

Motion seconded.

CHAIRMAN BLISS: It is moved and seconded that the report of the nominating committee be adopted and that Mr. Link be authorized to cast one vote for the several officers. Are there any remarks?

(Ayes and noes.)

CHAIRMAN BLISS: The ayes appear to have it; the ayes have it, and it is so voted.

C. P. LINK: Mr. President; Mr. Secretary, you will please let the record show a unanimous vote for the nominees.

CHAIRMAN BLISS: The total number of votes cast for the several officers is one, and the officers as recommended by the nominating committee are elected, and I will appoint Mr. Link and Mr. Whitney a committee to escort the president-elect to the chair.

President-elect SAMUEL LORD: Gentlemen, I appreciate the compliment you have paid me in this election, of being thought worthy of succeeding the distinguished men who have occupied this position. I regard it as a very high honor indeed, and I wish to thank you from the bottom of my heart for the confidence you have thus reposed in me. I hope that I may so carry on as to merit such confidence. I feel that it will be a difficult thing to fill the shoes of the men who have gone before me, and especially of my friend, Governor Bliss. You have had an opportunity here to see how easily and with how little friction he has conducted the affairs of this conference, and I wish this association to now express our appreciation of that fact by a rising vote in his honor.

(Rising vote.)

PRESIDENT BLISS: I appreciate very deeply your action in this regard, and I want to take this opportunity to thank you all for your hearty cooperation and your work, which has done so much to make this conference successful. It is ordinarily the procedure to bespeak for one's successor the same hearty cooperation. I do not do that, for the simple reason that I feel it would be entirely unnecessary. I know from my experience with this association, which dates back almost to its beginning, that our new president is worthy of your support and that he will certainly have it, and I want to thank you all very cordially for your kindness and consideration to me.

OSCAR LESER: Mr. Chairman: At the Utah meeting, you may recall, we were informed of the serious illness of Mr. Allen Ripley Foote. At that time he had just gotten through with an operation, and by resolution, greetings were sent to him. It is a matter of regret that since that time Mr. Foote's illness has ended in death. He passed away on January 17th, 1921, in North Carolina. The records of our proceedings set forth the services rendered by him, the founder of this association; the man who planned and conceived the idea; who gave years of his time and energy and money, so long as he had it, in the service of economic reform, and under these circumstances I move the adoption of the following resolution:

PRESIDENT BLISS (reading resolution): Recognizing the great service rendered by our first President, Allen Ripley Foote, in the cause of just taxation and economic reform, and acknowledging our gratitude to him as the founder and builder of the National

Tax Association, we, as co-workers and beneficiaries of his far-sighted vision and self-sacrificing labors, solemnly record our deep sense of regret over his death on January 17th, 1921, at Fletcher, North Carolina. He leaves to humanity a noble heritage of achievement and good work.

Motion seconded.

PRESIDENT BLISS: You have heard the resolution and the motion for its adoption, which has been seconded; are there any remarks?

(Ayes and noes.)

PRESIDENT BLISS: The ayes appear to have it; the ayes have it, and the resolution is adopted.

MR. BELKNAP: I don't believe there has been any motion continuing my committee on inheritance taxes. I should like some sort of statement as to whether you want us to go on working or not.

SECRETARY HOLCOMB: I think it would be desirable, Mr. President, to make a motion that this inheritance tax committee be extended, with power in the executive committee of the National Tax Association to substitute other members or to fill vacancies. I make that a motion.

C. P. LINK: Motion seconded.

PRESIDENT BLISS: I assume you understand the motion. If you do not understand the motion I will have it re-stated.

(Ayes and noes.)

PRESIDENT BLISS: The ayes appear to have it; the ayes have it, and the motion prevails.

So far as the chair is aware, there is no further business on the table.

S. E. FORNEY of Ohio: I came to this convention with several purposes in view. One of them was to take from this convention some things that might be of value to me in my work as a member of the tax commission of Ohio, and another was to get away from tax work at my desk for a time. I think I have been successful in both of these purposes. I have enjoyed this week greatly and I believe have been greatly benefited by it. If I am correctly informed, this association had its birth in Columbus, Ohio, in the year 1907, Mr. Foote of Columbus being the organizer of the association. Since that time you have been wandering about over the country, more or less at random, and we think that it is about time that you come back home, and therefore we extend to the

association an invitation to meet in the State of Ohio next year. If you see fit to accept this invitation I want to assure you that we shall welcome you in true " Buckeye " style, and I personally urge, if it is at all possible, that you arrange to hold your next meeting in our state.

THEODORE S. CADY of Missouri: We never get discouraged in Kansas City. On behalf of the Kansas City Chamber of Commerce I wish to extend a very cordial invitation to the association to hold the conference in Kansas City next year. I have the hearty approval of Mr. Howe of Kansas in the invitation to come to Kansas City. The city is situated on the line between the two states, and further than that it is the heart of America. The record has been in the past that a larger attendance is had at Kansas City conventions than at any other places not so centrally located, especially for national organizations, as this is. Further than that we have a rather selfish motive in extending an invitation for next year, and that is that we shall be considering, or will have considered, a new constitution, to be voted on by the people. The first preliminary step has been taken and the election to elect members to that convention is to be held this fall. Perhaps they will be in session next summer, and I do not doubt at all that if the convention is in session they will adjourn while this conference is going on. I have here, Mr. President, letters of invitation from Governor Allen of Kansas, Governor Hyde of Missouri, from the Chamber of Commerce of Kansas City, and a great many other organizations in the state, that I shall be glad to turn over to Mr. Holcomb, and we would be delighted to have you come.

C. P. LINK of Colorado: Colorado does not want to appear to be selfish, but many of you met one of our best assessors, Mr. Perkins of Colorado Springs, El Paso County; the man who assesses Pike's Peak. He was compelled, in order to meet his wife this morning, to leave before this opportune time, and left an important responsibility upon the shoulders of the representative of the tax commission of Colorado, as assessors often do in Colorado, to wit, not that I should simply extend an invitation but that I should guarantee this conference for Colorado Springs next year.

Now, speaking seriously, a couple of our good neighbors of Colorado Springs, who were fortunate in some of their business ventures in the West—gold mines, copper and oil—have constructed in Colorado Springs, out at the suburbs, near the entrance to the beautiful South Cheyenne Canyon, not the largest, but one of the very finest hotels in the whole world. That was completed about two years ago. Assessor Perkins had the assurance from the owners of that hotel that if you will meet with us next year, or at any time, if we do not get you next year, they will take care, under the roofs of that beautiful hotel, of from 500 to 600 delegates, at

rates not in excess of eight dollars per day, American plan, and give you the benefits of all the advantages that go with it, which include every modern convenience, among them a swimming pool in which we can all, practically, plunge at one time.

WILLIAM A. HOUGH (interrupting): That is one-third of the regular rates there, gentlemen.

MR. LINK (continuing): In addition to that, Spencer Penrose, the moving spirit of this hotel, was also the moving spirit in the construction of a beautiful automobile highway from Colorado Springs, winding through the Garden of the Gods to the mineral springs of Manitou, to Ute Pass, Cave of the Winds, up to Pike's Peak, and we will give you one session at an altitude of over 14,000 feet, and we will assure you pleasant weather and auspicious circumstances. Besides that, if hard times and high taxes continue, and you need help, other than human, we will give you another splendid session in the garden of our fathers, the Garden of the Gods. I thank you.

SECRETARY HOLCOMB: Mr. President—because you are still Mr. President—and members of the Association: Before I make reference to two or three similar invitations, I hardly think it would be fitting for me to disappear without expressing my appreciation of the confidence you have imposed in me by re-electing me as secretary. The emphasis placed at various times through this conference upon the secretary has seemed embarrassing, but I cannot help but feel that it expressed the real feeling of you, my friends. As is said in organizations of this kind, I may say, that "presidents may come and presidents may go, but Holcomb goes on forever". I do not wish to imply that that is the case, but indications up to this time seem to thus imply. After the beautiful tribute of last night, at the performance in which I played so hesitating a role, I hardly feel like indicating any expression of disapproval of attempting to go forward another year, so that I thank you and I hope that you will have the good "times" that I shall have during the coming year.

We have cordial invitations from various parts of the country and I will read at least one or two, because our friends who have been here wished to present them in person but have been forced to leave, so for those persons I think it would be fitting that I merely skim the subject matter of these letters. Here is one from Mr. Donley of Winnipeg, presenting one from the Mayor, which reads:

(Reads letter.)

I have a short letter from the managing secretary of the Winnipeg Board of Trade, expressing also the desire that we come, and

guaranteeing us accommodations at the hotels and convention halls, and mentioning significant attractions, comparing favorably with any other state of like size on the continent.

Supplementing what our friend Mr. Link has said, I have a telegram from Governor O. H. Shoop, addressed to me, as follows:

(Reads telegram of Governor Shoop of Colorado.)

I have a very cordial letter from Governor McKelvie of Nebraska, as follows:

(Reads letter.)

I have also a telegram from the Bureau of Publicity of the Chamber of Commerce of Omaha, endorsing that invitation.

I have letters from the Mayor of Buffalo, and from the Buffalo Chamber of Commerce; also from the City of San Francisco.

I have a letter from the Convention and Publicity Association of the City of Columbus, Ohio.

Detroit sends various communications, expressing the desire that we hold our conference at that city, and Mr. Burtless has expressed his hope to work further along that line.

I have a letter from the president of the Indianapolis Civic and Commerce Association.

Kansas City has already been presented, through its representative.

One from the Harrisburg Chamber of Commerce, Harrisburg, Pennsylvania.

You have all heard the invitation extended on behalf of New Mexico. Here is a letter written by the former Governor.

We have letters from the Chattanooga, Tennessee Chamber of Commerce, and from the Cincinnati Chamber of Commerce.

The Merchants' Association of the City of New York has quite frequently expressed its hope that we might decide upon that city.

I think that finishes the formal invitations that have been extended.

**PRESIDENT BLISS:** In the regular order of procedure the invitations will be referred to the executive committee.

**WILLIAM B. BELKNAP:** I have something in my mind that I should like to get rid of. It is a little off the line of taxation, but there is something going on down at Washington, and we have got the bill to pay. They are purchasing \$209,000,000 worth of silver there at \$1.00 an ounce, under the Pitman act. I don't know when the Pitman act was passed. It was sneaked through somehow or other. Silver is selling at sixty-two cents an ounce. The federal government is buying \$209,000,000 worth of it to coin silver dollars that will never be used. They have already bought \$70,000,000 of it and are coining silver dollars to replace those that



the economists all hoped we would get rid of some time and did get rid of during the war, and now, in order to make the silver mine owners happy, they are buying \$209,000,000 worth of silver that nobody wants, to lie in the vaults of Washington, and we have to raise the money to pay for it at a dollar an ounce, while the market price is sixty-two cents an ounce.

PRESIDENT BLISS: That is conference matter.

MR. BELKNAP: I thought I was imposing on time, but I had it on my heart.

PRESIDENT BLISS: A motion to adjourn the association meeting is in order, and the conference will automatically go to work as soon as we get this motion passed.

Motion made and seconded to go into conference.

(Ayes and noes.)

PRESIDENT BLISS: The meeting is adjourned and the conference will now proceed.

#### RESUMPTION OF CONFERENCE

HARRY P. SNEED resumes the chair.

CHAIRMAN SNEED: I shall be glad to recognize anyone who wants to discuss the inheritance tax matter at the place where it left off.

(No response.)

SECRETARY HOLCOMB: Mr. Chairman, I have several things to present very briefly. You will recall in my preliminary statement on the program that there were two or three things that I thought might have come up, but I was not able to work them in. One of them was particularly important and was briefly referred to by Senator Vaughan of Arkansas. The other was the matter of the movement for simplification of state governments in this country. That has a very attractive sound, and it has been taken up by various executives and put through. It appears that those executives have failed to sense what the thing meant and I wanted to drive a peg, so that it would appear in our proceedings, and hence asked Professor Lutz to have it in mind, because he had written a very able article for the *Annals*. He sat patiently through several sessions, he and I both hoping against hope that there would be a moment in which he might simply put it in the record. He finally had to leave and I feel that with the consent of the conference I should be permitted to insert in the published proceedings, pro-

vided there is space, a very short summary of his conclusions, relating to that move for simplification in state government, so far as it relates to the tax commission movement in this country. This association stands committed to bring about effective state administration, along the lines of a state tax commission, and has done more than any other body, I think, and it is a great mistake to make any backward step in that wonderful movement. The idea of introducing a single-headed commission, to occupy the position of a high-class floor-walker, with a lot of clerks to conduct the administration of local assessments in this country, is absurd. This would not appear obvious to a Governor, so he takes up these suggestions without thinking what they mean; that it is ruinous to send out a clerk to tell an elected assessor that he is not attending to his business properly. You have to have a man with more weight, with more personality, to impress a local official—who is very loath to do his duty, considering the pressure he is under—somebody that can appeal to him in a way other than by mere pressure. That is my thought expressed crudely, so that if I may have the permission to insert some little further suggestion along that line, I should like to have it.

C. P. LINK: Before I make such a motion I wish to just give one concrete example of the importance of this suggestion. Ex-Governor Lowden of Illinois, whom I think we all admire, regardless of politics, during his administration did some wonders, and he got a tax commission started there, under the short ballot scheme, that seemed pretty well unhampered, but it shows the danger of this system. It was under the finance department, and the governor who succeeded him. After this commission of three under the Finance Commissioner had gotten fairly started—and they had at least one remarkably good man and two other good ones on it—by the unfortunate political mix-up they have in Illinois, it has been completely wiped out. The new governor, I understand, first made an effort to get fifteen political striplings at the head of that department, under the finance commissioner, but the sentiment was so strong he had to back up to a certain extent although he finally did get those three men put out. That is to illustrate the dangers that may arise from an unfortunate situation of that kind. Mr. Chairman, I move you that our Secretary-Treasurer be authorized to use his discretion in inserting such a record within such space as he sees fit.

OSCAR LESER: In seconding that motion I take occasion to say that just what is described in your remarks is about what happened in my state. There was a survey of the state machinery by an avowed expert agency which reported in favor of simplification, apparently in favor of a single head tax commission—it is not

altogether clear, but at all events to occupy a place under or in the department of finance. The report was not acceptable to the governor, and for other reasons he probably thought it was expedient to have it passed on by a very large committee of representative men throughout the state. I felt that the notion of reversion to the old single head system, which we had from 1878 to 1914, was so preposterous and unthinkable that I never worried about it for a moment. I did not think when it came right down to a concrete proposition that there would be anyone with a reputation worth saving who would advocate such a proposition, because when this single commissioner was superseded by the present state tax commission, there was a tremendous change made in the functions of the office. Before that he simply was the assessor of the corporations. That was his principal function. He was superseded by a tax commission which had central supervisory powers, and to which was transferred the function of issuing all charters, to which has now been transferred the function of registering foreign corporations, and to whom appeals are taken from local assessments, where formerly they were taken to the courts. I simply wanted to say, as bearing upon this subject, that the governor's committee ultimately dropped the proposition and we are saved.

CHAIRMAN SNEED: You have all heard the motion as made by Mr. Link and seconded by Judge Leser. Are there any objections? If not, it will be so ordered. I did not ask a vote on this for the reason that the wisdom of the thing is so thoroughly plain that there could hardly be any dissent. I appreciate this more keenly perhaps on account of conditions in my own state, where we have a real tax commission. It has worked so well that assessments have been really and truly equalized, as much as is possible to do under the old direct property tax. The value of assessed property in Louisiana since this change was made in our law and a tax commission established, first under the name of the board of state affairs and now under the name of tax commission, the parishes which formerly assessed property at around twenty per cent are now assessing it at one hundred per cent, and the parishes which were formerly assessed at one hundred per cent—and they were far and few between—are now on the same footing.

[Pursuant to the foregoing resolution, the secretary inserts the following extract from an article by Professor Lutz, entitled "The State Tax Commission and the Property Tax," which appeared in the *Annals of the American Academy of Political and Social Science* for May, 1921.]

In view of the present and probable future importance of the property tax and of the state tax commission in the administration

of this tax, it seems reasonably safe to conclude that the latter will continue to be a recognized part of the state administrative organization. Sporadic instances of reaction appear from time to time in different states, inspired on some occasions by the exigencies of shifting political control and on others by the cheerful idiots who usually abound in state legislatures, ready to introduce any and every sort of ill-considered measure. Generally speaking, attacks of this sort will be estimated at their true worth by any sensible legislature.

More serious are some of the proposals for disposing of the tax commission that have been advanced in connection with various recent plans for the reorganization of state governments. These proposals have usually suggested either a single tax commission instead of the board of three, or some degree of subjection to a department of finance, which is usually to be under the general headship of a director of finance.

I have elsewhere summarized the case in favor of the board or commission of three members, as against either the single tax commissioner type or the larger board. While the single commissioner type has been very efficient in some states, notably Massachusetts and Connecticut, the balance of the argument seems to be in favor of the commission of three members, chosen on the basis of their qualifications and without regard to their political affiliations, but with a long tenure of office and an adequate compensation. In my judgment the case is clear in favor of the commission of three members in all of the states larger in area, population and wealth than the New England states. One tax commissioner is better than none, but it would be a backward step and a false economy to reduce a commission of three to this type. Such a move would inevitably mean a more complete delegation of authority and responsibility to clerical subordinates, greater overloading of the man at the top and lessened efficiency. The loss would be especially apparent at any change of incumbency.

It would be even more unwise to subordinate the tax commission to a director of finance in a department of finance. The commission would thus become simply one of many bureaus and its members would be denoted to mere clerkships, a position of dependency and subordination which would effectively deprive them of all opportunity for inspiring guidance and leadership, and of practically all corrective and coercive authority. As the functional head of the tax system, the tax commission may be regarded with respect and its leadership followed with confidence. As a clerical division it could hardly inspire either respect or awe, while it would be deprived of all opportunity for leadership. The prestige value of its position as an independent state board, subject to no outside influence and control, is an important source of the tax commission's power. Clerical subordinates would be about as

successful in generating genuine enthusiasm and respect for the full value law among the assessors as hired mourners would be in arousing sympathy at a funeral.

The reorganization code recently introduced into the Ohio legislature apparently preserves the independence of the tax commission, but in reality destroys it in large measure, by requiring that the director of finance shall be, *ex-officio*, secretary of the commission. Since the director of finance is appointed by the governor, for a term not longer than that of the chief executive, it is evident that such an arrangement ties the commission's hands in an exasperating way, while at the same time it opens the door for all manner of subtle influence on the commission from the executive chamber. The staff of the commission is considered to be in the department of finance, except in so far as the governor may decide that employes or experts shall be outside this department. With these points of vantage, the governor and the finance director will properly regard the tax commission as a mere appendage to the finance department, and the assessors will not be long in discovering the same fact.

It is impossible to find in the program of the separation of the sources of state and local revenues an adequate ground for depriving the state tax commission of its responsibility for the results of the local assessment. Even in those rather rare instances in which the separation has been absolutely complete, the whole necessity for an equalization is not removed. There remains the problem of an equitable distribution of the local tax burden as among the various taxing districts of the county and as among different classes of taxpayers, especially individual and corporate. And to the extent that the separation is only partial, which is by far the more common and familiar situation, the necessity for central supervision and equalization becomes the more compelling. The inelasticity of the indirect sources of state revenue compels, sooner or later, a return to the property tax as a source of state revenue. It is rather futile, therefore, to rely on separation to secure indefinite postponement of the obligations which are involved in the property tax.

The experience of Ohio may again be cited. Here the condition of local assessment during the decade after 1910 was condoned in a spirit of blind reliance on the policy of complete separation of revenue sources, and the undervalued counties were allowed to remain low through this period, on the ground that no harm was being done. The inadequacy of the sources of state revenue forced resort to the direct property tax, and various projects are pending, including the soldier bonus, which afford little real prospect of permanent reduction by this tax. Equalization and effective central control became important just as the *laissez faire* policy was triumphing, and we are, in this state, beginning to

reap the penalty of substituting segregation for vigorous administrative methods and a proper conception of leadership in taxation.

Throughout this article I have defended the idea of state control of the operation of the property tax, with a reasonable degree of centralization to that end. I am not contending, however, that administrative improvement will wholly obviate the necessity of improvements in the tax system. On the other hand, all the evidence points to the conclusion that the efforts of the state tax commissions to compel the listing of intangibles for taxation as property, at high local rates, have been little more successful than the unaided efforts of the local assessor. In other words, centralized administration, however drastic, is not the whole solution of the difficulties of the general property tax, that is, the uniform rule. It is equally clear, though, that the successful operation of any system of property taxation cannot be achieved without adequate administrative control, so that we find the tax commission an essential feature of the administrative structure, whatever the changes in the form of the tax system itself.

SECRETARY HOLCOMB: Just another thing; I want to say, while we are here and Mr. Sneed happens to occupy the chair, that another subject that I had hoped might be worked into the final program was the subject of tax limitations. Perhaps we can develop that next year; but I want to refer you to the admirable and effective system of tax limitations that exists in the State of Louisiana, with which Mr. Sneed is quite familiar. If there were time now he might make a few remarks.

I have just one other request; I have had a single page sent me by an admirable gentleman and merely ask permission to insert that. It is in regard to tax exemptions. It is very well stated. He would be pleased to have us put it in the record.

CHAIRMAN SNEED: In the absence of objections it will be so ordered.

[The communication referred to is as follows:]

### TAX EXEMPTION

W. FRED SILLECK, BROOKLYN, N. Y.

The open door, through which will pass the power to destroy democratic government. It is a power that buys votes, placing in our legislature irresponsible representatives.

It is class legislation; it destroys thrift and initiative; why work, if government gives for nothing!

It is deceptive; all taxes are paid by the ultimate consumer.

Tax exemption leads to tax exemption and still more tax exemption; it cannot be satisfied; the cry is and will be, more, more.

Men clamoring for office are "everywhere" pleading that they favor this or that tax exemption. The suffrage of their fellow citizens is asked for, on the ground that they helped constituents to put their hand into the public treasury, through tax exemption. All tax exemption is passing the buck. Spending the other fellow's money.

SAVE THE UNITED STATES OF AMERICA. NO TAX EXEMPTION.

*Build upon the solid rock, square deal; not upon shifting sand, deceit.*

C. P. LINK: Mr. Sneed, tell us about you tax limits.

CHAIRMAN SNEED: In that matter, gentlemen, since a committee has been provided for by this conference to investigate and report on that at our next meeting, I think it would be taking two bites of the cherry, the first bite being very poor, because I haven't with me the necessary figures to illustrate the scheme so as to make it at all pleasing or profitable to hear. There is no doubt, however, that taxing districts, especially the inferior taxing districts, should be held down in their rates of taxes, especially those districts where the property-holders are in the minority of the electors. In Louisiana, a small taxing district had decided to erect some kind of a public building and levy a tax therefor. The resolutions described the kind of building. A large taxpayer, having heard of the matter, undertook as a private and personal enterprise to build that building himself, furnishing his time and everything else, rather than submit to his proportion of the tax, so he would save money in so doing. My own theory and thought is that no rate should be permitted until after the assessments are complete and after the budget has been made. Our parishes or counties are required by law to make a budget before a tax rate is levied, and they are forbidden to levy any greater rate of tax than will provide the fund which that budget demands. The theory of that is perfect, though I must admit that in a great many cases the budget usually calls for as large an amount of taxes as a permitted tax rate will raise. As I said before, the subject will be investigated exhaustively by the committee to report at the next meeting, and I think it hardly worth while to attempt any discussion now.

OSCAR LESER: I move the adjournment of the conference.

[Adjournment of conference.]

# ATTENDANCE AT THE FOURTEENTH ANNUAL CONFERENCE

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## ALABAMA

Jones, Jos. Brevard	Montgomery
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## ARIZONA

Howe, Charles R.	Phoenix
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## ARKANSAS

Vaughan, George	Little Rock
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## CALIFORNIA

Jewett, C. E.	Los Angeles
Jewett, Mrs. C. E.	Los Angeles
Lucas, H. C.	San Francisco
Lucas, Mrs. H. C.	San Francisco

## COLORADO

Link, C. P.	Denver
Perkins, F. A.	Colorado Springs
Spalding, George	Denver
Swinney, Robert	Sterling

## CONNECTICUT

Allyn, W. Ellery	Waterford
Blodgett, William H.	Hartford
Chapman, H. H.	New Haven
Fairchild, Fred R.	New Haven
Potter, Arthur F.	Hartford

## DISTRICT OF COLUMBIA

Colladay, E. F.	Washington
Colladay, Mrs. E. F.	Washington
Councilor, J. A.	Washington
Murphy, Louis S.	Washington
Valgren, V. N.	Washington

## GEORGIA

McPherson, John H. T.	Athens
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## IDAHO

Robertson, John D.	Boise
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## ILLINOIS

Bogg, Harry B., Jr.	Chicago
Cushing, Royal B.	Chicago
Elliott, William S.	Chicago
Millner, LeRoy	Chicago
Millner, Mrs. LeRoy	Chicago
Paddock, H. W.	Chicago
Sayler, James L.	Chicago
Sutherland, Douglas	Chicago
Tunell, George G.	Chicago

## INDIANA

Brown, John J.	Rockport
Hough, William A.	Greenfield
Hough, Mrs. William A.	Greenfield
Miller, Mrs. R. V.	Rockport
Sims, Fred A.	Indianapolis
Sims, Mrs. Fred A.	Indianapolis
Zoercher, Philip	Indianapolis
Zoercher, Mrs. Philip	Indianapolis

## IOWA

Johnson, R. E.	Des Moines
Ramsay, W. C.	Des Moines
Smith, E. M.	Winterset
Van Alstine, H. S.	Gilmore City

## KANSAS

Foster, C. D.	Ness City
Harper, H. D.	Wichita
Howe, Samuel T.	Topeka
Howe, Miss Clare E.	Topeka
Rowan, W. McD.	Topeka
Rowan, Mrs. W. McD.	Topeka

## KENTUCKY

Belknap, William B.	Louisville
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## LOUISIANA

O'Beirne, Mary	New Orleans
Sneed, Harry P.	New Orleans
Sneed, Mrs. Harry P.	New Orleans

## MAINE

Maling, Ernest H.	Portland
Stetson, C. S.	Greene

## MARYLAND

Girdwood, Allan C.	Baltimore
Griffith, F. J.	Baltimore
Leser, Oscar	Baltimore
Ray, J. Enos	Baltimore

## MASSACHUSETTS

Alexander, Thornton	Boston
Andrews, Charles A.	Waban
Ayres, Philip W.	Boston
Bond, Henry Herrick	Boston
Bullock, Charles J.	Cambridge
Burbank, H. H.	Cambridge
Cance, Alexander E.	Amherst
Dalrymple, Albert H.	Winchester
Fischer, Frederic L.	Cambridge
Gottlieb, Samuel	Everett
Holmes, Alexander	Kingston
Huse, John W.	Melrose
Kent, L. B.	Newtonville
Locke, John W.	Boston
Nichols, Philip	Boston
Patten, Robert G.	Amesbury
Prescott, E. Wentworth	Boston
Prescott, Mrs. E. Wentworth	Boston
Reynolds, Harris F.	Belmont
Stacey, Stephen L.	Brighton
Wakefield, Edwin E., Jr.	Newtonville
Wheeler, F. L.	Roxbury
White, Capt. Wm. P.	Lowell
Wilkins, William A.	Bedford

## MICHIGAN

Barnes, Orlando F.	Lansing
Blossen, Mat D.	Manchester
Burtless, B. F.	Lansing
Burtless, Mrs. B. F.	Lansing
Copley, A. Ward	Detroit
Duff, Ralph	Lansing
Kelly, Samuel H.	Lansing
Linton, William S.	Saginaw
Lord, George	Detroit
Marsh, Robert E.	Lansing
Vandenboom, F. H.	Marquette
Wells, Fred B.	Cassopolis

## MINNESOTA

Armson, J. G.	St. Paul
Burton, Hazen J.	Minneapolis
Lord, Samuel	St. Paul
Sanders, M. T.	St. Paul
Scott, J. A.	Duluth
Scott, Mrs. J. A.	Duluth

## MISSISSIPPI

Roberson, Frank	Jackson
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## MISSOURI

Bear, S. J.	St. Louis
Bear, Mrs. S. J.	St. Louis
Cady, Theodore S.	Kansas City
Cady, Mrs. Theodore S.	Kansas City

## MONTANA

Edgerton, John	Helena
Walker, J. W.	Helena

## NEBRASKA

Hall, Charles E.	Omaha
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## NEW HAMPSHIRE

Amey, John T.	Lancaster
Brown, Albert O.	Manchester
Chamberlin, James S.	Durham
Craig, Samuel H.	Durham
Donovan, M. H.	Concord
Farmer, William P.	Manchester
Foster, John H.	Concord
Hale, Fletcher	Laconia
Hale, Mrs. Fletcher	Laconia
Henderson, O. V.	Durham
Johnson, Miss Martha E.	Laconia
Matthews, Joseph S.	Concord
Shepard, Joseph E.	Concord
Thompson, Mrs. E. P.	Laconia
Tremblay, Joseph O.	Manchester
Wakefield, Mary Ann	Bretton Woods
Whittemore, L. F.	Concord

## NEW JERSEY

Breidenbach, Fred C.	Newark
Brewster, Samuel L.	Montclair
Brewster, Mrs. Samuel L.	Montclair
Carroll, John L.	Newark
Cox, John L.	Montclair
Elin, Nathaniel	Newark
Farrell, P. J.	Montclair
Fettinger, Theodore S.	Newark
Fettinger, Mrs. Theodore S.	Newark
Fitzsimmons, James J.	Newark
Growney, William A.	Harrison
Howe, John	Newark
Howe, Mrs. John	Newark
McGovern, Philip	Jersey City
McLean, Joseph P.	Jersey City
McMahon, Christopher C.	Jersey City
Murray, P. J.	Hoboken
O'Connell, Harry B.	Newark
Sandmeyer, William E.	Newark
Shoenthal, Isaac	Orange
VanDeern, Clarence T.	Harrison

# ATTENDANCE AT FOURTEENTH ANNUAL CONFERENCE 529

## NEW MEXICO

Hanna, G. C.  
Saint, J. E.

Roswell  
Santa Fe

## NEW YORK

Bailey, Charles R.  
Behan, James F.  
Broderick, Joseph P.  
Brownell, G. G.  
Burke, William J.  
Carter, Franklin, Jr.  
Davenport, Frederick M.  
Ettinger, Virgil P.  
Goodwin, E. N.  
Haig, Robert M.  
Holcomb, A. E.  
Holmes, George E.  
Ivins, James S. Y.  
Kiehbiel, Karl T.  
Kiehbiel, Theodore  
King, William H.  
Knapp, Walter H.  
Knapp, Mrs. Walter H.  
Law, Walter W., Jr.  
Leighton, W. M.  
Lockhart, O. C.  
McKenzie, H. C.  
Merrill, J. J.  
Moriarty, Edward J.  
Odlum, F. B.  
Odlum, Mrs. F. B.  
Orcutt, B. S.  
Owen, Edward L.  
Post, Clifford F.  
Powell, Henry M.  
Powell, Mrs. Henry M.  
Rearick, Allan C.  
Reeves, C. E.  
Satterlee, Hugh  
Saxe, Martin  
Schoeneck, Edward  
Shea, Timothy J.  
Souther, C. A.  
Tobin, Charles J.  
Whitney, Francis N.  
Zoller, J. Frank  
Zoller, Mrs. J. Frank

New York  
New York  
Buffalo  
New York  
Buffalo  
New York  
Clinton  
New York  
New York  
New York  
New York  
New York  
Albany  
Clarence Center  
Clarence Center  
New York  
Canandaigua  
Canandaigua  
Rye  
New York  
New York  
Walton  
Albany  
New York  
New York  
New York  
New York  
New York  
New York  
New York  
New York  
New York  
Buffalo  
New York  
New York  
Syracuse  
Brooklyn  
Yonkers  
Albany  
New York  
Schenectady  
Schenectady

## NORTH CAROLINA

Currie, W. L.  
Watts, A. D.

Raleigh  
Raleigh

## NATIONAL TAX ASSOCIATION

## NORTH DAKOTA

Baker, Lyman A.	Bismarck
Wallace, George E.	Bismarck

## OHIO

Dickey, M. R.	Cleveland
Dickey, Mrs. M. R.	Cleveland
Dunn, James, Jr.	Cleveland
Dunn, Mrs. Gertrude B.	Cleveland
Dunn, Miss Gertrude A.	Cleveland
Dyer, C. A.	Columbus
Forney, S. E.	Columbus
Hunt, James G.	Fremont
Laylin, Clarence D.	Columbus
Laylin, Lewis C.	Columbus
Lutz, Harley L.	Oberlin
Maltby, Charles S.	Columbus
Newell, Sterling	Cleveland
Pomeroy, George E.	Toledo
Sweeney, C. D.	Toledo

## PENNSYLVANIA

Cramp, S. G.	Pittsburgh
Drake, J. Frank	Pittsburgh
Fertig, J. H.	Harrisburg
Johnston, Samuel	Pittsburgh
Jonsson, G. W.	Sharon
Kalisher, S. S.	Philadelphia
Lamb, Carl S.	Pittsburgh
Lee, Henry H.	Philadelphia
McKay, M. K.	Pittsburgh
Newton, B. P.	Pittsburgh
Reber, John	Pottsville
Snyder, Charles A.	Harrisburg
Spahr, M. C.	Pittsburgh

## RHODE ISLAND

Bliss, Zenas W.	Providence
Bliss, Mrs. Zenas W.	Providence
Bucklin, John C.	Providence
Davis, Frank F.	Providence
Davis, Mrs. Frank F.	Providence
James, Harold W.	Providence
Leahy, Edward L.	Providence
Newhall, George H.	Providence
Rogers, F. T.	Providence
Thompson, James E.	Providence
Tobie, Edward P.	Providence
Tobie, Mrs. Edward P.	Providence

# ATTENDANCE AT FOURTEENTH ANNUAL CONFERENCE 531

## UTAH

Bailey, William	Salt Lake City
Beatty, William N.	Salt Lake City
Brown, E. M.	Salt Lake City
Cluff, Harvey H.	Salt Lake City
Sawyer, E. M.	Salt Lake City
Sawyer, Mrs. E. M.	Salt Lake City

## VERMONT

Avery, John M.	Montpelier
Gates, Benjamin	Montpelier
Hastings, W. G.	Montpelier
Morse, Melvin G.	Montpelier

## VIRGINIA

Bryan, George	Richmond
Gary, J. Vaughan	Richmond

## WEST VIRGINIA

Hallanan, Walter S.	Charleston
Pritchard, J. G.	Fairmont

## WISCONSIN

Ely, Richard T.	Madison
Koester, E. J.	Milwaukee
Leenhouts, John H.	Milwaukee
Leenhouts, Mrs. John H.	Milwaukee
Lyons, Thomas E.	Madison

## CANADA

Barnstead, Arthur E.	Halifax
Begin, J. A.	Quebec
Donley, L. W.	Winnipeg
White, J. T.	Toronto



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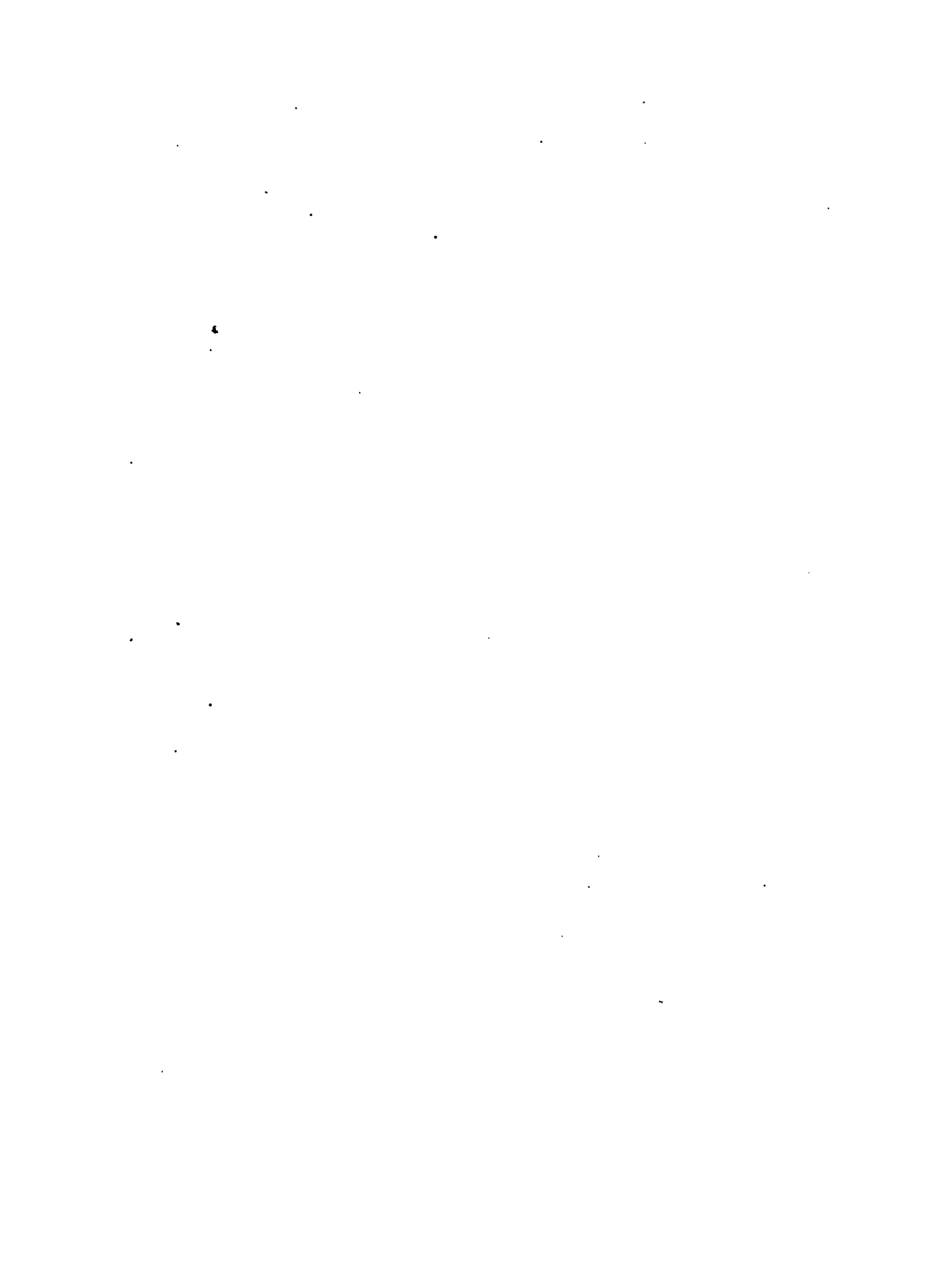
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